

Cornell Law School Library

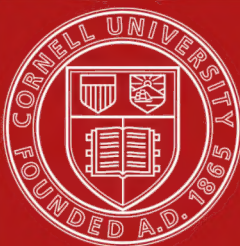
Cornell University Library  
**KF 801.A7A93**

**Authorities, deductions and notes in the**



**3 1924 018 827 398**

law



## Cornell University Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.



AUTHORITIES  
DEDUCTIONS AND NOTES  
IN  
CONTRACTS

---

PRINTED BY  
The University Press  
MINNEAPOLIS  
1900

LA 7656

COPYRIGHT 1900

BY

The University Press of Minnesota

## INTRODUCTION.

### JURISPRUDENCE.

“Law, in its most general and comprehensive sense, signifies a rule of action, and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations.”

Blackstone, Vol I, § 39.

**Jurisprudence.** Positive law, or Jurisprudence, is a general term, and includes all the rules of action which are enforceable by the courts of the land. Courts do not undertake to enforce all the laws of the universe; but only such laws as, from the nature of persons and things, it is possible and proper for them to enforce. If a person does not love God, as he is commanded to, the court will not issue a writ of mandamus to compel him to do so, or if a person hates his neighbor contrary to the moral law the courts will not restrain him from so doing by a writ of injunction. Jurisprudence is the science which classifies and illustrates those laws which the courts of the land endeavor to enforce in the affairs of mankind. The laws which courts attempt to enforce, or human laws, as they are sometimes called, are very few when compared with all the laws of the Universe, but it is those few laws announced and enforced by the courts of the land that are taught in the schools as the Science of Jurisprudence.

**Roman Civil Law.** The civil law, as it is generally called, comprised the laws of ancient Rome. It has only an indirect influence upon our laws in America.

**The Common Law.** As a system of law was developed at Rome, and was called the Civil Law, so another system of Jurisprudence was later developed in England, which is known as the Common Law. The Common Law of England “is properly distinguishable into two kinds: 1. General customs, which are the universal rule of the whole kingdom, and form the com-

mon law, in its stricter and more usual signification. 2. Particular customs; which, for the most part, affect only the inhabitants of particular districts. 3. Certain particular laws; which, by custom, are adopted and used by some particular courts, of pretty general and extensive jurisdiction.

1. As to general customs, or the common law, properly so called; this is that law, by which proceedings and determinations in the king's ordinary courts of justice are guided and directed. This, for the most part, settles the course in which lands descend by inheritance; the manner and form of acquiring and transferring property; the solemnities and obligations of contracts; the rules of expounding wills, deeds and acts of parliament; the respective remedies of civil injuries; the several species of temporal offences; with the manner and degree of punishment; and an infinite number of minuter particulars, which diffuse themselves as extensively as the ordinary distribution of common justice requires. Thus, for example, that there shall be four superior courts of record, the Chancery, the King's Bench, the Common Pleas, and the Exchequer; that the eldest son alone is heir to his ancestor; that property may be acquired and transferred by writing; that a deed is of no validity unless sealed and delivered; that wills shall be construed more favorably, and deeds more strictly; that money lent upon bond is recoverable by action of debt; that breaking the public peace is an offence, and punishable by fine and imprisonment; all these are doctrines that are not set down in any written statute or ordinance, but depend merely upon immemorial usage, that is, upon common law for their support."

Blk. Vol. I, §§ 67-8.

*Written and Unwritten.* This body of English Common Law was called by Blackstone the unwritten law, "because their original institution and authority are not set down in writing as acts of Parliament are, but they receive their binding power, and force of laws, by long and immemorial usage, and by their universal reception throughout the kingdom," but statutes and acts of Parliament and the edicts of the crown were known as the written law, because they were reduced to writing before they took effect.

**The Common Law in America.** When our forefathers came to America, they brought with them this body of English common law, and so far as that law was applicable to their new conditions, it became the common law of the colonies. As new States have come into the Union since the Revolution, this body of English common law as modified and amended by English statutes up to the time of the Revolution has become the common law of those States respectively, excepting the State of Louisiana, where the civil law prevailed.

Sackett vs. Sackett, 8 Pick. 309.

Coburn vs. Harvey, 18 Wis. 156.

*American Jurisprudence.* The study of law, like charity, should begin at home. We shall begin by investigating the legal rights and duties of men, women, and children in Minnesota and the other States or Territories of America. We shall postpone our generalizations and classifications of the law until we have discovered and examined the facts. We shall commence our study with the subject of contracts, but as the terms "torts" and "crimes" will be frequently employed, we must first understand their meaning.

A *Tort*, in a general way, may be said to be a wrongful act or omission of one party, resulting in damage to another, as where "A" wrongfully goes upon the land of "B" and there girdles the trees, destroys the crops, or does some other damage.

"A *Crime* is an act, committed or omitted, in violation of public law, either forbidding or commanding it."

Bl. Vol. 4, § 5.

As where "A" wrongfully kills "B," or steals the property of "C," or sells liquor to a minor contrary to law.

#### CONTRACTS.

A contract has been defined as "an agreement, enforceable at law, made between two or more persons, by which rights are acquired by one or more, to acts or forbearance on the part of other or others."

Anson on Con. Part 1, § 2.

Justice vs. Lang, 42 N. Y. 493.



The essential elements of a contract are expressed or necessarily implied in the following definition: "A contract is an agreement, enforceable at law, whereby a party undertakes to do or not to do some particular thing."

First of all we must notice that a contract is an "agreement." The word agreement is generic, and the term contract is but a species of agreement. There are many agreements which are not contracts.

Sage vs. Wilcox, 6 Conn. 81-85.

I. In order that an agreement may ripen into a contract, it must be made with the intention of changing the legal relations of the parties respecting each other.

\*McClurg vs. Terry, 21 N. J. Eq. 225.

Higgins vs. Lessig, 49 Ill. App. 459.

Keller vs. Holderman, 11 Mich. 248.

II. In order to become a contract the agreement must also rest upon a consideration. That is, the promise by one party, must be given in exchange for something regarded in law as good or valuable. There must be a *quid pro quo*; otherwise the agreement is called a *nudum pactum*.

If "A" promise to pay "B" \$1,000 in thirty days, and "B" does nothing in return for that promise, that is, does not cause "A" in some way to have an equivalent in law, then the agreement to pay the same is not a contract.

\*Fink vs. Cox, 18 John. 145.

But if the agreement is reduced to writing and sealed by the party making it, the promise is then valid, upon the ground that a seal conclusively implies a consideration, even though there be no consideration in fact.

\*McMillan vs. Ames, 33 Minn. 257.

Van Valkenburg vs. Smith, 60 Me. 97.

Bunn vs. Winthrop, 1 John. Ch. 329.

*Exception.* There is one exception to the doctrine that a seal conclusively implies a consideration. It is in the case of a deed of bargain and sale conveying lands. In addition to the seal there must, as a general rule, be an actual consideration. This matter will be further considered under the head of consideration, and in the subject of real property.

Bishop on Con., §§ 42, 124.

A seal is an impression on wax, or paper, or some other tenacious substance, capable of being impressed.

4 Kent's Com. 452.

2 Bl. Com. 305.

III. Again, in order that an agreement may ripen into a contract, it must be definite and certain, so that the court when enforcing it can see clearly what the parties intended to bind themselves to do.

Marble et. al. vs. Standard Oil Co., 48 N. E. 783.

Sherman vs. Kitsmiller, 17 Serg. and R. 45.

IV. And again, an agreement in order to ripen into a contract must not be in violation of any law—common, statutory—or against public policy.

\*Hatch vs. Mann, 15 Wend 45.

\*Sternberg vs. Bowman, 103 Mass. 325.

\*Eaton vs. Kegan, 114 Mass. 433.

Bisbee et. al vs. McAllen, 39 Minn. 143.

Ingersoll vs. Randall, 14 Minn. 400.

\*Sterling vs. Sinnickson, 5 N. J. L. 871.

V. In order that the agreement of the parties may become a contract, the assent of the parties must be expressed, so that each may know that the other intends to be bound—a secret assent is not sufficient.

\*White vs. Corliss, 46 N. Y 467.

(a) The assent of the parties may be expressed by conduct as well as by words, as when an auctioneer brings down his hammer as an indication that he has accepted a bid.

\*Payne vs. Cave, 3 T. R. 148.

In this case the court says: "The auctioneer is the agent of the vendor, and the assent of both parties is necessary to make a contract binding; this is signified on the part of the seller by knocking down the hammer, which was not done here until the defendant had retracted. The auction is not inaptly called *locus poenitentiae*. For, bidding is nothing more than an offer on one side, which is not binding on the other side until it is assented to. But, according to what is now contended for, one party would be bound by the offer and the other not, which can never be allowed."

(b) Even silence on the part of the offeree, under circumstances where he is bound to speak, might amount to an acceptance of an offer, and therefore be a sufficient expression of assent; but from mere silence, where a person is not bound to speak, no inference can be drawn that the person who is silent assents to the offer made him.

Royal Ins. Co. vs. Beatty, 12 Atl. 607.

O'Neal vs. Knippa, 19 S. W. 120.

VI. Notwithstanding the fact that the agreement was made by the parties with intent to change their legal relations to each other, and the promise by one was given in exchange for something of value moving from the other, and notwithstanding the thing to which they have agreed is definite and certain in all respects, and not contrary to law or public policy, and the assent of the parties has been sufficiently expressed by each to the other, yet the agreement may not ripen into a contract, which the courts will enforce, unless it be reduced to writing, as is required in certain cases by the Statute of Frauds. Where the statute requires the agreement to be in writing it must be so reduced to writing before it will be enforceable.

#### CONTRACTS CLASSIFIED.

Having seen how agreements may ripen into contracts, we will now see how contracts are classified.

**A Simple or Parol Contract.** A simple or parol contract is an agreement whereby a party undertakes, upon a sufficient consideration, to do or not to do a particular thing, and is not under seal.

**Oral Contract.** An oral contract is one expressed by word of mouth.

**Written Contract.** A written contract is one all of whose terms have been reduced to writing.

**A Specialty.** A specialty is a contract under seal.

**A Contract of Record.** A contract of record is one made and entered of record before a judicial tribunal.

**Executed Contract.** An executed contract is one where the particular thing agreed to has been wholly performed.

**Executory Contract.** An executory contract is one where the particular thing agreed to has not been wholly performed.

**An Express Contract.** An express contract is one, all of whose terms have been positively and expressly assented to by the parties to the contract.

**An Implied Contract.** An implied contract is one, some or all of whose terms have not been expressly assented to by the parties to the contract, but are inferred by the law from the conduct and situation of the parties.

**Quasi-Contracts.** Obligations imposed by law upon certain persons, and enforceable in an action ex-contractu, are sometimes called "contracts implied in law," or "quasi-contracts," though they lack the essential element of actual assent of the parties. Strictly speaking such obligations are not contractual, but are treated, so far as the remedy is concerned, as if they were.

Such are the so-called contractual obligations of insane persons, and the obligation of a husband to pay for necessities furnished his wife, and the obligation a person is under to return money received from another by mistake.





## PART I.

## PARTIES.

As every contract presupposes an agreement, so every agreement presupposes the existence of two or more parties competent to agree. There can be no contract with but one party; a person cannot contract with himself.

The presumption is that all natural persons may enter into contracts; but as a matter of fact some persons are disqualified by law, and others are disqualified by a lack of mental power. Therefore, capacity to contract is of two kinds, natural and legal, and these must concur in all the parties in order that they may be bound by their agreement.

By *natural* capacity is meant a competent measure of mental power, and by *legal* capacity is meant the law's permission to use one's natural capacity. For example: A boy, twenty years of age, may have natural capacity sufficient to make valid contracts; but as the law does not permit him to make valid contracts, except in certain cases, he lacks the legal capacity. While another person, being thirty years of age, would have the law's permission to contract, but if he were insane he would lack the natural capacity.

We will begin our investigation of this subject, as to who may make valid contracts, with the general proposition that all persons may contract, except those whom the law disqualifies partly or entirely.

## INFANTS.

The law disqualifies an infant in part from entering into contracts. It will enforce his contracts for necessities, if he have no parent or guardian who supplies them for him, but it will not, as a general rule, enforce against his will, any other of his agreements.

The common law regards as an infant any person under twenty-one years of age; but in many of the states of the Union the statutes regard males under the age of twenty-one

years, and females under the age of eighteen, as minors or infants.

The first question to be considered, therefore, is the time at which a natural person arrives at majority, and this question we find discussed in the following cases.

\**Bardwell vs. Purrington*, 107 Mass. 425.

*Howard's Case*, 2 Salkeld 625.

*Fitzhugh vs. Dennington*, 2 Ld. Ray. 1094.

*Wells vs. Wells*, 6 Ind. 447.

*Ross et. al. vs. Morrow et. al.*, 16 L. R. A. 542; 19 S. W. 1090.

Minnesota Statutes 1894, § 4534.

*Cogel vs. Raph*, 24 Minn. 194.

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

**Deductions and dicta from cases examined.**

From the foregoing authorities we deduce the following propositions:

(1) That a person at common law reaches his majority at the earliest moment of the day preceding the twenty-first anniversary of his birth, but by statute in some states on the day preceding the eighteenth anniversary in the case of females.

(2) On this day, preceding such anniversary, a person is of full age; consequently he can make contracts, vote, execute a will, and should one sell liquor to such a person on that day he would not be violating the law prohibiting the sale of liquor to infants or minors.

(3) *Reason for the Rule.* The reason for this rule is technical, in that the common law recognizes no fractions of a day.

### Classification of Infants' Contracts

The contracts of infants have generally been classified as valid, void and voidable. His contracts for necessities have generally been held as valid; his power of attorney has been pronounced void; and his other contracts are generally pronounced voidable. As a void contract is no contract whatever, the proper classification would be into *valid* and *voidable*.

A valid contract is one which binds all the parties thereto; a voidable contract is one which may be avoided by one or more of the parties. In the case of a contract between an infant and an adult, the infant may avoid it on the ground of his infancy, while the adult is incapable of avoiding it on that ground.

#### VALID.

Having seen when a minor reaches majority, let us now consider the valid contracts which the law permits him to make.

**I. Contracts for Necessaries.** As to the doctrine of valid contracts made by infants, we will examine the following cases.

\*Gay vs. Ballou, 4 Wend. 403.

\*Strong vs. Foote, 42 Conn. 203.

\*Randall vs. Sweet, 1 Denio 460.

\*Guthrie vs. Murphy, 4 Watts 80.

In Re Besondy, 32 Minn. 385.

Sharp vs. Cropsey, 11 Barb. 224.

Middlebury College vs. Chandler, 16 Vt. 683.

Werner's Appeal, 10 Norris (Pa.) 222 (91 Pa. St.)

Angel vs. McLellan, 16 Mass. 28.

Anderson vs. Smith, 33 Md. 465.

Peters vs. Fleming, 6 M. & W. 42.

Davis vs. Caldwell, 12 Cush. 512.

Swift vs. Bennet, 10 Cush. 436.

Conn. vs. Coburn, 7 N. H. 368.

Haine vs. Tarrant, 2 Hill (S. C.) 400.

Wailing vs. Toll, 9 John. 141.

\*Chapple vs. Cooper, 13 M. & W. 252-8.

## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

11  
12  
13  
14

**DECISION**

ACTION

ISSUE

LAW

FACTS



DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**Deductions and dicta from cases examined.**

From the foregoing cases and others cited and examined, we deduce the following propositions:

(1). An infant may make a valid contract for necessities, provided he has no parent or guardian who supplies them for him.

(2) As to what are necessities Coke says: "An infant may bind himself to pay for his necessary meat, drink, apparel, necessary physic, and other such necessities; and likewise for his good teaching or instruction, whereby he may profit himself afterwards."

(3) What are necessities must be determined by having regard to the infant's condition, estate, and circumstances in life; and they must be for the comfort and advantage of the infant himself.

(4) The question whether a specific thing can ever be a necessary for an infant is a question of law for the court, but whether any specific thing is a necessary in a particular case, is a question of fact for the jury to decide.

(5) Among those things which the courts have held to be necessities are the following:

(a) A livery for the servant of an infant officer in the army, who was required to have an attendant.

*Hands vs. Slaney*, 8 T. R. 578.

The case last cited was decided in 1800; and it was an action against an infant captain in the army, for a livery which he had ordered for his servant, and for some cockades he had ordered for some of his soldiers. The court below left it for the jury to say whether or not these were necessities under the circumstances of the case, and the jury held they were; but Lord Kenyon, chief justice, said in the court above that the cockades could not be necessities and ought not to have been included in the damages. But regarding a livery the judge said, that it might be necessary for an officer to have a servant, and if necessary to have a servant, then a livery for the servant might be a necessary.

(b) Regimental clothes may also be a necessary for an infant who is a member of a volunteer corps.

*Coates vs. Wilson*, 5 Esp. 152.

(c) The courts have intimated that a horse might, under proper circumstances, be a necessary.

Harrison vs. Fane, 1 M. & G., 550.

(d) The services rendered by a sister to her two sick, infant brothers, who died intestate, and her further services in preparing their bodies for interment, were held by the court to be necessities, and properly chargeable to the estate of the minors.

Werner's Appeal, 10 Norris (Pa.), 222.

(e) Services rendered by a dentist upon the teeth of a minor are properly regarded as necessities.

(f) Boarding, lodging, schooling, clothing and physician's bills may be necessities.

(g) The necessities of a wife may be the necessities of an infant husband.

Turner vs. Trisby, 1 Str. 168.

(h) The funeral expenses of a deceased husband have been held as necessities of the infant's widow, when his estate was insolvent.

\*Chapple vs. Cooper, 13 M. & W., 252.

(i) A room occupied by an infant while in college has been recognized by the courts as a necessary.

Gregory vs. Lee, 30 Atl., 53.

In this last case the court said: "Under the facts stated it must be decided that this room at the time defendant hired it, and during the time he occupied it, comes within the class called necessities, and also that to him during said period it was an actual necessary, for lodging comes clearly within the class of necessities."

(j) The services rendered by an attorney in defending an infant against a criminal charge have been regarded as a necessary, the reasonable value for which a minor may bind himself by contract to pay.

Askey vs. Williams, 11 S. W., 1101.

Among the things which the courts have held as not necessities are the following:

(a) Dinners, confectionary, or fruit; soda-water, lozenges, jelly and similar things, supplied to an infant while an under-



graduate in Trinity College, Cambridge, were held by the court not to be *prima facie* necessities.

Brooker vs. Scott, 11 M. & W., 67.

(b) Tobacco, including pipes and cigárs, has been held as never, except in very special circumstances, a necessary for an infant.

Bryant vs. Richardson, 12 Jurist N. S., 300.

(c) Money is not a necessary in its technical sense, so one who loans money to an infant cannot recover it at common law, even though the infant expends it for necessities.

Darby vs. Boucher, 1 Salk., 278.

Price et al. vs. Sanderson et al., 60 Ind., 310.

In the last above case it is stated in the syllabus that "an infant is not liable at law on his promissory note or other contract, for money by him thereby obtained, to be used in improving, repairing, or working his farm; nor is he liable thereon though the money obtained be expended for necessities. The indebtedness for necessities for which an infant is liable must be created directly for the necessities."

(d) But the rule seems to be otherwise in equity, and an infant is liable for money, which he has borrowed and actually applied to the payment of necessities.

Marlow vs. Pitfield, 1 Pere Wms. 558.

In this last case, after stating that money loaned to an infant and by him expended for necessities cannot be recovered of the infant in an action at law if the infant set up his infancy, yet the court says: "It is, however, otherwise in equity; for if one loans money to an infant to pay a debt for necessities, and in consequence thereof the infant does pay the debt, here although he may not be liable at law he must, nevertheless, be so in equity; because in this case the lender of the money stands in the place of the person paid, viz.: the creditor for necessities, and shall recover in equity as the other should have done at law."

**Other Valid Contracts.** (1) Besides his contracts for necessities, the infant may make a valid contract of marriage. At the common law infants could marry, males at the age of four-

teen, and females at the age of twelve, and the consent of their parents was not necessary to the validity of the marriage.

Bennett vs. Smith, 21 Barb. 439.

(2) The contract of enlistment made by an infant may be valid.

In Re Higgins, 16 Wis. 351.

In Re Morrissey, 137 U. S. 158.

Commonwealth vs. Gamble, 11 S. & R. 92.

United States vs. Blakeney, 3 Gratt. 405-11-13.

(3) And contracts authorized by statute, as assignment for the benefit of creditors.

People vs. Mullin, 25 Wend. 698.

(4) An infant can also make a valid contract to do what the law would compel him to do, as in a case where he has committed a tort. Here being liable in damages, he may make a valid contract to pay such damages.

Ray vs. Tubbs, 50 Vt. 688.

Nordholt vs. Nordholt, 26 Pac. 599.

In this last case a minor induced his mother to convey land to him to hold in trust for his brother, promising his mother that he would convey the same to him.

Afterwards, while yet a minor, he did convey the same land to his brother, intending however to subsequently disaffirm it on the ground of infancy. Later he attempts to disaffirm this deed on the ground of infancy but the court says: "If the respondent took and held the legal title in trust for appellant, he cannot disaffirm or avoid his deed in execution of that trust on the ground of minority, since the execution of the trust was a duty which a court of equity would have compelled him to perform notwithstanding his infancy."

And in another case it was held that as an infant was bound under the statutes to maintain his illegitimate child, that his contract for necessities suitable for that child would be a valid contract, the court saying: "Where an infant is under a legal obligation to do an act, he may bind himself by a fair and reasonable contract made for the purpose of discharging the obligation."

People vs. Moores, 4 Denio 518.

Prouty vs. Edgar, 6 Ia. 353.

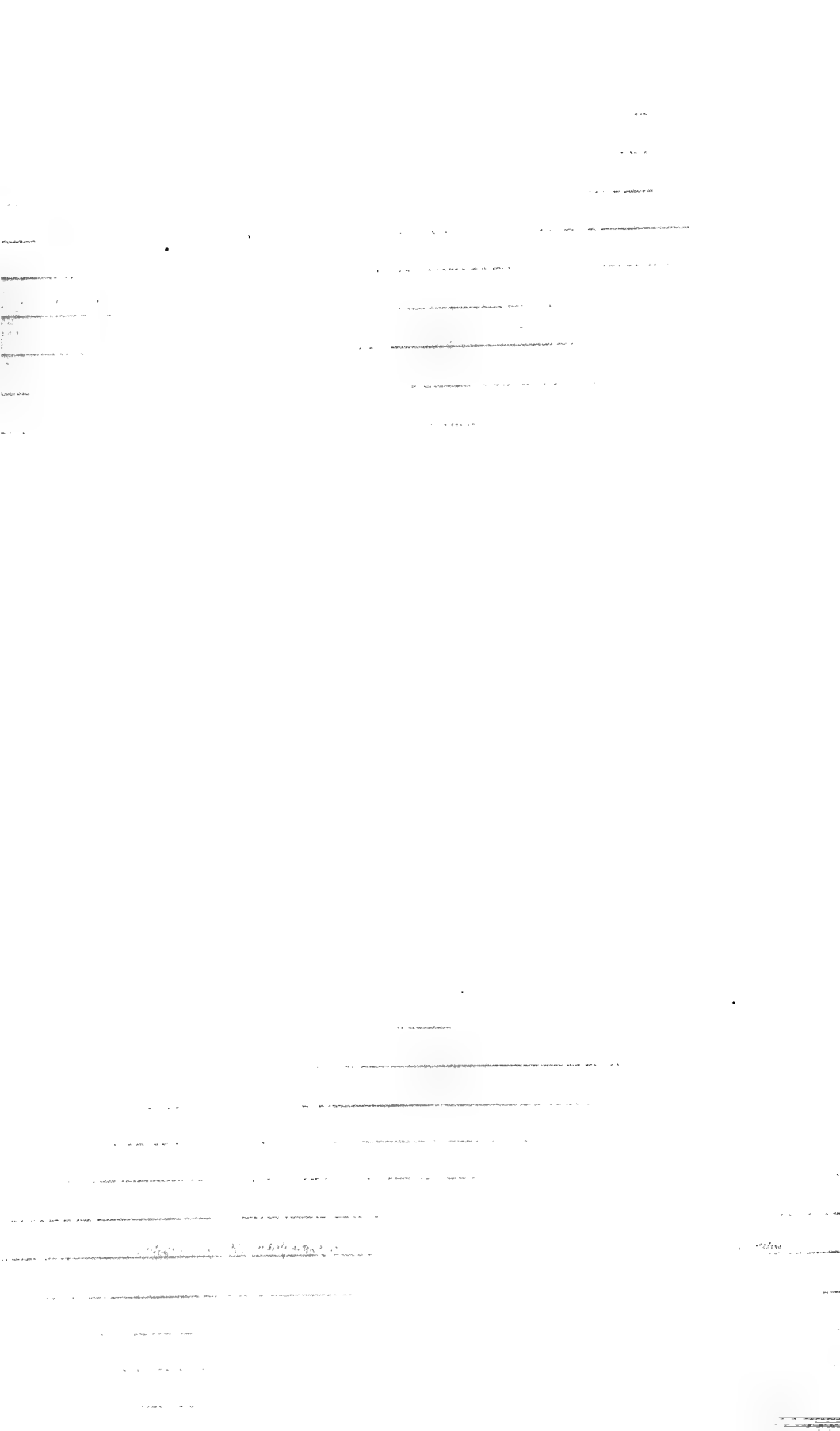
Starr vs. Wright, 20 Oh. St. 97.

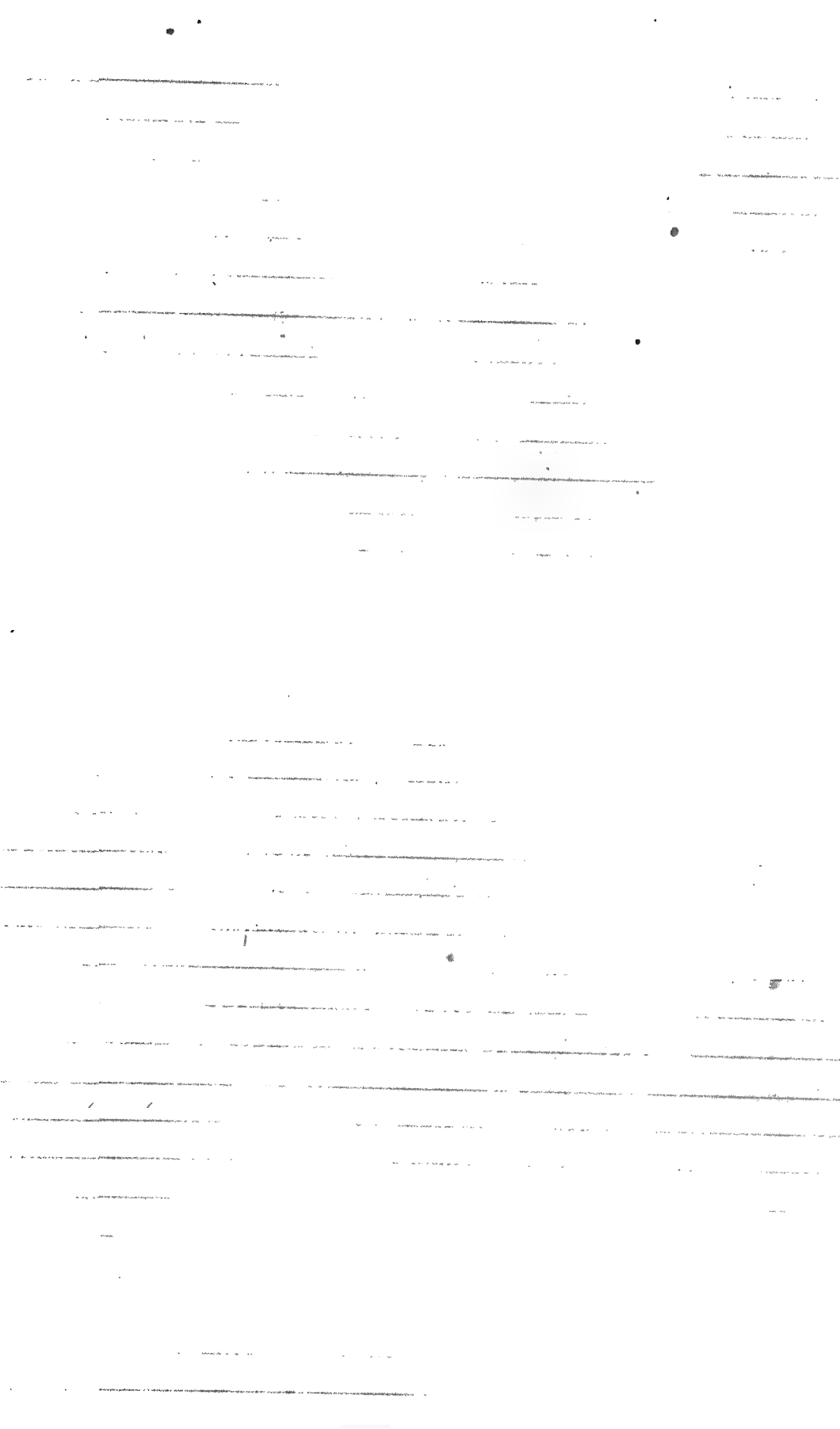
The contracts hereinbefore mentioned, for necessities, of marriage and enlistment and such others as are permitted by statute, comprise the valid agreements which the courts will enforce against an infant. To this extent he is able to contract as an adult, and all such contracts may properly be called valid; while all others which he may make are voidable.

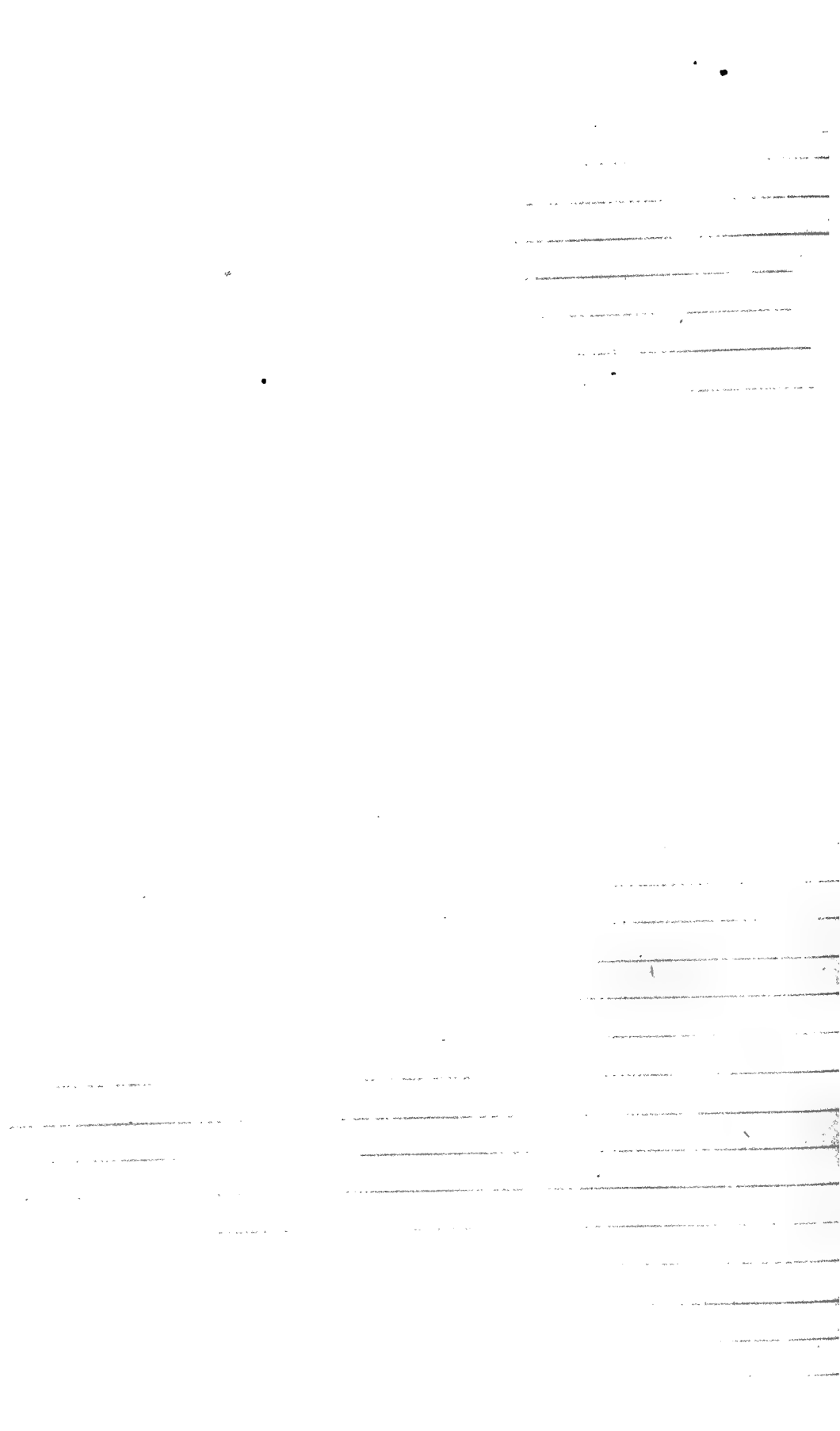
FURTHER DEDUCTIONS AND DICTA.













## VOID.

An infant's contract, creating a power of attorney to convey real estate, or to confess a judgment, and his contract of marriage before seven years of age, have been called void contracts. They are in fact contracts in form only, but are a nullity in essence. A void contract is no contract. Neither party, in the case of such agreements, is under any legal obligation arising out of the same. It seems, therefore, useless to speak of such agreements as contracts at all. And in the state of Minnesota an infant's power of attorney has been classed among the infant's voidable contracts.

\**Coursolle vs. Weyerhauser*, 69 M. 328; 72 N. W. 697.

## VOIDABLE.

Having now considered an infant's valid contracts, and having seen that hisso-called void contracts are no contracts at all, it follows that the proper classification of an infant's contracts is into those which are valid, and those which are voidable; and we must now consider those which are voidable.

(1) *Voidable*. A voidable contract is one which may be avoided, or disaffirmed by one or more of the parties. For the law applying to an infant's voidable contracts, we will consult the following cases:

\**Hunt vs. Peake*, 5 Cowan, 475.

\**Goodsell vs. Myers*, 3 Wend., 479.

\**Bigelow vs. Grannis*, 2 Hill 120.

\**Henry vs. Root*, 33 N. Y. 526.

\**Welch vs. Bunce*, 83 Ind. 382.

\**Baker vs. Kennett*, 54 Mo. 82.

\**Dixon vs. Merritt*, 21 Minn. 196.

\**Goodnow vs. Em. Lbr. Co.*, 31 Minn. 468.

\**Dawson vs. Helmes*, 30 Minn. 107.

\**Logan vs. Gardner*, 136 Pa. St. 588.

*McCarty vs. Woodstock Iron Co.*, 92 Ala. 463.

*Folds vs. Allardt*, 35 Minn. 488.

*Bool vs. Mix*, 17 Wend. 119.

*Weaver vs. Jones*, 24 Ala. 420.

*Nightengale vs. Withington*, 15 Mass. 271.

- Harner vs. Dipple, 31 Oh. St. 72.  
Owen vs. Long, 112 Mass. 403.  
Patchin vs. Cromach, 13 Vt. 330.  
Lawrence vs. McArter, 10 Oh. 38.  
\*Stromberg vs. Rubenstein, 44 N. Y. S. 405.  
\*Coursolle vs. Weyerhauser, 72 N. W. 697.  
Tucker vs. Moreland, 10 Pet. 56.  
Cummings vs. Powell, 8 Texas 80-88.  
Ferguson vs. Houston, etc., Ry., 73 Tex. 344.  
Gillespie vs. Bailey et al., 12 W. Va. 70.  
Hale vs. Gerrish, 8 N. H. 374.  
Carthy vs. Nicrosi, 72 Ala. 332.  
Walsh vs. Powers, 43 N. Y. 23.  
Irvine vs. Irvine, 9 Wall. 617-27.  
Ford vs. Phillips, 1 Pick. 202.  
Thompson vs. Lay, 4 Id. 47.  
Irvine vs. Irvine, 5 Minn. 61.  
Hastings vs. Dollarhide, 24 Cal. 195.  
Bozeman vs. Browning, 31 Ark. 264.  
McCormic vs. Leggett, 8 Jones N. C. 425.  
Stafford vs. Roof, 9 Cowen, 626.  
Roberts vs. Wiggin, 1 N. H. 73.  
Boody vs. McKenney, 23 Me. 517.  
Callis vs. Day, 38 Wis. 643.  
Ellis vs. Alford, 64 Miss. 8.  
Green vs. Green, 69 N. Y. 553.  
Craig vs. Van Bebber, 100 Mo. 584.  
Chandler vs. Simmons, 97 Mass. 508.  
Manning vs. Johnson, 26 Ala. 446.  
Kerr vs. Bell, 44 Mo. 120.  
Folts vs. Ferguson, 77 Tex. 301.  
\*Shipman vs. Horton, 17 Conn. 481.  
Adams vs. Beall, 67 Md. 53.  
Hoyt vs. Wilkinson, 57 Vt. 404.  
Towle vs. Dresser, 73 Me. 252.  
Willis vs. Twambly, 13 Mass. 204.  
Carr vs. Clough, 26 N. H. 280.  
Carpenter vs. Carpenter, 45 Ind. 142.  
Boody vs. McKenny, 23 Me. 517.  
Farr vs. Sumner, 12 Vt. 28.  
Dunton vs. Brown, 31 Mich. 182.

- \*Chapin vs. Shafer, 49 N. Y. 407.
- Cogley vs. Cushman, 16 Minn. 397.
- \*Conrad vs. Lane, 26 Minn. 389.
- Merriam vs. Cunningham, 11 Cush. 40.
- Wieland vs. Kobick, 110 Ill. 16.
- Sims vs. Everhardt, 102 U. S. 300.
- \*Miller vs. Smith, 26 Minn. 248.
- Price vs. Furman, 27 Vt. 268.
- Brandon vs. Brown, 106 Ill. 519.
- Chandler vs. Simmons, 97 Mass. 508.
- Green vs. Green, 69 N. Y. 553.
- Reynolds vs. McCurry, 100 Ill. 356.
- \*Boyden vs. Boyden, 9 Metc. 519.
- \*Gaffney vs. Hayden, 110 Mass. 137.
- Ray vs. Haines, 52 Ill. 485.
- Vehue vs. Pinkham, 60 Me. 142.
- Whitmarsh vs. Hall, 3 Denio, 375.
- \*Vent vs. Osgood, 19 Pick. 572.
- \*Derocher vs. Continental Mills, 58 Me. 217.
- \*Rush vs. Wick, 31 Oh. St. 521.
- Hunt vs. Peake, 5 Cowen 475.
- \*Johnson vs. N. W. Mut. Ins. Co., 56 Minn. 365; 59 N. W. R. 992.



# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION



## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

•

LAW

FACTS

•

•

•

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

1. The first issue is whether the defendant's conduct was negligent. The court found that the defendant's conduct was negligent.

DECISION



ACTION

.

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

10/1/2025

DECISION

### **Deductions and Dicta from Cases Examined.**

From the foregoing cases, and others cited and examined, we deduce the following propositions respecting an infant's voidable contracts regarding realty, personalty, services, and his personal relations.

**Ratification.** The voidable contracts of an infant may be ratified by him after he has attained his majority but not before, it requiring the same degree of mental and legal capacity for him to render a voidable contract valid, as is required to make a valid contract in the first instance. Any attempt on the part of the minor before reaching majority to ratify his voidable contract would, of course, itself be voidable or a nullity.

Goodsell vs. Meyers, 3 Wend. 479.

Bigelow vs. Grannis, 2 Hill 120.

**How Ratified.** The voidable contracts of an infant may be ratified by word of mouth, or by conduct; and any acts or conduct which are inconsistent with an intent to disaffirm, are evidence of its ratification.

"If after coming of age he retains the property for his own use, or sells or otherwise disposes of it, such detention, use, or disposition—which can be conscientiously done only on the assumption that the contract of sale was a valid one and by it the property becomes his own—is evidence of an intention to affirm the contract, from which a ratification may be inferred.

Henry vs. Root, 33 N. Y. 526.

Boyden vs. Boyden, 9 Metc. 519.

(a) The various acts by which an infant, after coming of age, may evince an intention to ratify his voidable contracts, made while an infant, are of course innumerable. Thus, a minor having purchased a plow and after reaching majority retaining and using the same for two or three years, it was held that he had ratified the contract of purchase.

Boyden vs. Boyden, 9 Metc. 519.

(b) And, in another case, where an infant purchased land and gave his note for the purchase money and after reaching his majority continued in possession of the land, exercising

over it acts of ownership and even selling a portion of it to other parties, it was held that he had affirmed the contract of purchase.

Henry vs. Root, 33 N. Y. 526.

**Ratification—Effect of.** Ratification of a voidable contract renders the same absolutely binding *ab initio*, and this is true whether the ratification is by express words or implied from conduct; and if an action is begun for its breach it must be upon the original contract.

Hastings vs. Dollarhide, 24 Cal. 195.

Minock vs. Shortridge, 21 Mich. 303-315.

Houlton vs. Manteuffel, 51 Minn. 185.

Hall, et al. vs. Jones, et al., 21 Md. 439.

**Disaffirmance of Voidable Contracts.** An infant may disaffirm his voidable contract respecting realty, on the ground of infancy, after he has reached his majority but not before; but his contracts respecting personalty, his personal services, and his various relations may be disaffirmed by him on that ground, either before or within a reasonable time after his majority. This difference between the rule respecting realty and that respecting the other subject matter of his contracts is fully recognized and maintained by the authorities.

Inasmuch as the minor can, on reaching his majority, disaffirm his contract for the sale of his land and claim all the rents and the profits, having arisen therefrom from the time of the sale until its disaffirmance, he is supposed to be sufficiently protected; but as his personal property is perishable, the law has permitted him to disaffirm his contract respecting it, at any time, either before or within a reasonable time after coming of age.

Welch vs. Bunce, et al., 83 Ind. 382.

Baker vs. Kennett, 54 Mo. 82.

Shipman vs. Horton, 17 Conn. 481.

Vent vs. Osgood, 19 Pick. 572.

Derocher vs. Continental Mills, 58 Me. 217.

Hunt vs. Peake, 5 Cowen 475.

A minor may plead infancy in an action for goods sold the firm of which he was a member at the time of the sale.

Folds vs. Allardt, 35 Minn. 488.

**When Disaffirmed.** There is a conflict of authorities as to how long after reaching majority is allowed a person within which to disaffirm his former conveyance, on the ground of infancy at the time he executed it. Some cases have held that he might have the full statutory period of limitations within which to exercise his right; but the modern rule, quite generally adopted in the states of our Union, permits such former infants only a reasonable time after coming of age, within which to disaffirm his conveyance.

Goodnow vs. Em. Lbr. Co., 31 Minn. 468.  
37 Cent. Law Jour. §19 p. 378.

Some cases hold that an infant's partnership agreement cannot be disaffirmed during his minority.

Dunton vs. Brown, 31 Mich. 182.

**How Disaffirmed.** These voidable contracts of an infant may be disaffirmed by him by any word or act which clearly evinces to the other party that the infant totally renounces the contract; and after reaching majority he must not only refrain from any acts of affirmance, but he must perform some positive act of disaffirmance.

Dixon vs. Merritt, 21 Minn. 196.  
Chapin vs. Shafer, 49 N. Y., 407.  
Vent vs. Osgood, 19 Pick. 572.

(a) In the case of Dixon vs. Merritt, 21 Minn. 196, an infant having mortgaged his land did, after reaching his majority, convey the same land to another, which last deed of conveyance was regarded as sufficient evidence of a disaffirmance of the mortgage.

(b) And also in the case of Chapin vs. Shafer, 49 N. Y. 407, it was held that a minor who, having mortgaged certain chattels, afterwards gave a bill of sale of the same chattels to another, did by that act of sale disaffirm the mortgage which he had before given.

(c) And also in the case of Vent vs. Osgood, 19 Pick. 572, a minor, who had contracted to make a sea voyage and while on the voyage deserted the ship and refused to go further, did by such act of desertion clearly evince his intention not to stand by his former contract, and he thereby disaffirmed it.

Formerly it was held that the act of disaffirmance must be of the same solemn character as the original act which was to be disaffirmed, i. e., if the original contract was a deed it could only be disaffirmed by a deed; but now, a formal notice of disaffirmance, or any act evincing a purpose to disaffirm, is, as already stated, sufficient.

Heath vs. West & A., 26 N. H., 191-196.

Vallandingham vs. Johnson, 85 Ky. 288.

Scranton vs. Stewart, et al., 52 Ind. 68-93.

Peterson vs. Laik, 24 Mo. 541.

Haynes vs. Bennett, 53 Mich. 15.

Dixon vs. Merritt, 21 Minn. 196.

White vs. Flora and Cherry, 2 Overt. (Tenn.) 426.

**Return of Consideration.** The former infant may disaffirm his conveyance, on the ground of infancy, without placing his grantee *in statu quo* by returning the consideration or otherwise, and the same rule holds true in regard to his contract respecting personalty. The mere act of disaffirmance does not require the return of the consideration, which the minor has received, nor even an offer to return it, as a condition precedent to such act of disaffirmance; but as a general rule, if the minor has the consideration *in specie* and he brings an action to recover that which he has parted with, the courts will require that he return to the defendant that which he received; but if he has lost that, which he received or has squandered it, or if he has disposed of it in any way before reaching his majority, he may, nevertheless, recover that which he seeks without a return of that which he has received, according to the weight of common law authority.

Dawson vs. Helmes, 30 Minn. 107.

Conrad vs. Lane, 26 Minn. 389.

Miller vs. Smith, 26 Minn. 248.

Carpenter vs. Carpenter, 45 Ind. 142.

The question as to the return of the consideration arises in various ways:

(a) If the voidable contract is *executory* on both sides, then the question as to the return of the consideration cannot arise, upon disaffirmance by the infant, and, more than this,



such disaffirmance discharges both parties—the infant and the adult—from all obligation and liability.

Hunt vs. Peake, 5 Cowen 475.

Rush vs. Wick, 31 Oh. St. 521.

(b) If the contract be *executed*, however, by the infant (as where the infant has delivered the property sold by him, or has paid the money which the contract calls for), but *executory* on the part of the adult, then the infant may recover his property so parted with, or the reasonable value of his services, or the restoration of his money, upon the disaffirmance of his contract. In such case, also, the question as to the infant's return of the consideration received cannot arise, for he has received none.

Gaffney vs. Hayden, 110 Mass. 137.

Vent vs. Osgood, 19 Pick. 572.

Derocher vs. Continental Mills, 58 Me. 217.

Robinson vs. Weeks, 56 Me. 102.

(c) If the contract has been executed by the adult, as where he delivers goods or money to the minor, and the minor only responds in an executory promise to pay therefor; then the minor may avoid the contract, but if he still has the property received, *in specie*, he must surrender it or the adult may gain possession of it by action.

Bloomer vs. Nolan, 36 Neb. 51; 53 N. W. 1039.

In this last case an adult had sold and delivered building material to a minor, for which the minor had not paid, and in an action to recover upon a mechanic's lien the minor set up infancy, and the court said: "The rule is well settled that one who seeks to avoid a contract, on the ground of infancy, will be required to make restitution only of so much of the consideration as is retained by him when he attains his majority, or when he elects to disaffirm. The law, which is designed to protect the young and inexperienced, would be ineffectual if an infant were required as a condition of relief to return an equivalent of the property wasted or squandered."

But if the minor declines to pay for the property which he has received, and for which he has given his promise to pay, the adult may replevy that property, if the minor has it *in specie*; if not the adult is without remedy.

Tyler on Infancy, § 37.

If the minor has exchanged the property he received for other property, or if he has lost that which he has received but still has other property, must he return an equivalent for what he received from the adult? The weight of authority is to the effect that he need not return an equivalent.

Harvey vs. Briggs, 10 L. R. A. 62.

Brantley vs. Wolf, 60 Miss. 420.

In this last case the court says: "If the minor has lost or squandered the consideration, during minority, it is nothing more than the law expects of him, and he cannot be required to purchase the right of reclaiming his own by still further abstractions from his estate. Such a rule would practically strike down the shield which the law, by reason of his inexperience and youth, throws around him."

Ewell's Leading Cases, 126.

Mustard vs. Wohlford's heirs, 15 Gratt. 329.

Manning vs. Johnson, 26 Ala. 446.

(d) If the contract is executed on both sides, as where the adult delivers property to the minor for cash or other property, then, if after disaffirmance the minor would reclaim the property which he delivered to the adult, he must restore to the adult what he got if he has it in specie, if not the adult is without remedy.

Green vs. Green, 69 N. Y. 553.

In this case, a minor sold a farm to his father, receiving cash, and having spent it before he reached his majority, and having no other property with which to replace it, the court permitted the former minor to recover his farm.

Carpenter vs. Carpenter, 45 Ind. 142.

In this case, a minor entered into a horse trade with an adult, giving to the adult a gelt horse in exchange for a stallion. It would seem from the case that the plaintiff, a minor, injured the stallion and afterwards rescinded his contract and demanded the return of the horse with which he parted. The court says respecting the rights of the parties: "We have concluded, upon looking into the question, that the plaintiff was not bound to make any tender at all of the stallion before he could maintain his action (for the value of the horse he parted

with). Upon the avoidance of the contract by the plaintiff the case stood as if none had been made, and his right to the possession of his gelding, or the value of him, became at once complete and perfect. Upon the avoidance of the contract, the plaintiff still having the stallion, the defendant became without doubt entitled to him, whatever condition he might be in, but it does not follow that the plaintiff was bound to make a tender of him before bringing his action. If the stallion received injury while in the possession of the plaintiff the remedy of defendant therefor, if the law furnishes any remedy, is an action for the tort. Says Mr. Parsons, 'if during infancy he has destroyed or parted with the property purchased before demand made for it subsequent to his disaffirmance, the seller, as we have said, may be remediless; unless possibly he does it in such a way, or under such circumstances, as to amount to a tort. But if he destroys or disposes of the property after coming of age, this must be regarded as a confirmation of the contract.'"

Tucker vs. Moreland, 10 Peters 58-74.

Chandler vs. Simmons, 97 Mass. 508.

Price vs. Furman, 27 Vt. 268.

Craig vs. Van Bebber, 100 Mo. 584.

Lacy vs. Pixler, 25 S. W. 206.

**False Representation as to Age.** The fact that an infant falsely represents that he is of full age, will not render his contract valid, nor will it in law estop him from avoiding the contract, though it may perhaps constitute a cause of action for a tort.

Carpenter vs. Carpenter, 45 Ind. 142.

Conrad vs. Lane, 26 Minn. 389.

Rice vs. Boyer, 9 N. E. R. 420.

**Effect of Disaffirmance.** The effect of disaffirmance, on the ground of infancy, is to annul the contract on both sides *ab initio*, and the parties revert to the same situation as if the contract had not been made. If, for instance, a minor refuses to pay the price for goods he has purchased, as he may do, this annuls the contract of sale, and the title to the goods reverts at once in the vendor. So in regard to real estate, if he purchases real estate and the conveyance transferring the title to

him is subsequently disaffirmed on reaching majority, *ipso facto* the title to the land reverts in the infant's former grantor.

Boyden vs. Boyden, 9 Met. 519.

Mustard vs. Wohlford's heirs, 15 Grat. 329.

Hoyt vs. Wilkinson, 57 Vt. 404.

French vs. McAndrew, 61 Miss. 187.

McCarty vs. Woodstock Iron Co., 92 Ala. 463.

**Personal Privilege.** Disaffirmance by an infant is a personal privilege, and cannot be taken advantage of by a stranger.

Alsworth vs. Cordtz, et al., 31 Miss. 32.

**Disaffirmance Cannot be Withdrawn.** If after majority the infant ratifies his contract, he cannot afterwards disaffirm it; and if he disaffirms, after majority in case of real estate, and any time in case of personal property, he cannot afterwards evade his disaffirmance and ratify.

McCarty vs. Woodstock Iron Co., 92 Ala. 463.

**Disaffirmance in Toto.** A disaffirmance goes to the whole contract, and if a part is disaffirmed the whole must be. A party cannot avoid that part of the contract which is unfavorable to himself, and ratify the other part which may be of an advantage to him.

Cogley vs. Cushman, 16 Minn. 397.

Heath vs. West & A., 8 Foster, 101.

French vs. McAndrew, 61 Miss. 187.

**Trover for Destruction of Property.** While an infant is liable for his torts generally, yet the breach of his contract will not be treated as a tort, so as to make him liable.

Jennings vs. Rundall, 8 Term Rep. 336.

In the last mentioned case a minor hired the plaintiff's mare for a ride, and in the course of the journey an accident happened whereby the mare was injured; whereupon the plaintiff brought an action for damages, and the court refused to entertain such action.

But there is a recognized distinction between torts connected with a contract and torts independent of a contract; and it has been held in a recent case, "that the only logical and defensible conclusion is that he is liable to the extent of the loss actually sustained for his tort, where a recovery can

be had without giving effect to the contract. The test, and the only satisfactory test, is supplied by the answer to the question, Can the infant be held liable without directly or in directly enforcing his contract?"

Rice vs. Boyer, 9 N. E. 420.

### Recapitulation.

Englebert vs. Troxell et. al., 58 N. W. 852.

The opinion in the above entitled action is an extensive and quite accurate recapitulation of the essential principles connected with the voidable contracts of infants, as will be seen from the syllabus, which is as follows:

1. All contracts of an infant, except those for necessities, are voidable by him, at his election, made within a reasonable time after he becomes of age.

2. The validity of a contract made by an infant does not depend upon a ratification thereof by him after his minority ends; but, to invalidate such contract, he must, by some act clear and unmistakable in its character, disaffirm the same.

3. The bringing of a suit in equity by a party to cancel a deed made by him while a minor, and on that ground, is an unequivocal and sufficient disaffirmance of such deed.

4. What is a reasonable time for one, after becoming of age, to disaffirm a contract made by him during his minority, is a mixed question of law and fact, to be determined from the circumstances of each particular case.

5. The meaning of the term "necessaries" cannot be defined by a general rule applicable to all cases. The question is a mixed one, of law and fact, to be determined in each case from the particular facts and circumstances in such case.

6. Under the evidence in this case, *held*, that services performed by the guardian ad litem of an infant in defending a suit brought to foreclose a real estate mortgage executed by the infant's ancestor, were not necessities.

7. One who seeks to disaffirm a contract on the ground that he was an infant at the time of its execution is required to return so much of the consideration received by him as remains in his possession at the time of such election, but is not required to return an equivalent for such part thereof as may have been disposed of by him during his minority. (36 Neb. 51 followed).

8. An infant conveyed his real estate to one "P" in consideration of \$240 in cash paid by "P" to the infant's father. The father purchased a piano for the infant with the money. The infant, on coming of age, had in his possession the piano, and disaffirmed the deed. *Held*, that the quondam infant, as a condition precedent to his right to disaffirm the deed, was under no legal obligation to tender or surrender the piano to "P," nor repay "P" the money which he had paid the infant's father.

9. A deed made by an infant to his guardian ad litem in consideration of services rendered or to be rendered by him as such guardian ad litem is voidable, at the election of such infant, on his becoming of age.

10. The statute makes it the duty of an attorney at law to act as the guardian ad litem of an infant in any suit pending against him, when appointed for that purpose by an order of the court; and for performing the duties of an attorney ad litem the attorney must look, and look only, for the amount of his compensation, to the court. The compensation allowed the attorney as guardian should be taxed as part of the costs in the proceeding, and collected as such, and no other, different, or greater amount can be collected than that so allowed.

**Minnesota Doctrine.** The preceding doctrines regarding an infant's voidable contracts have been modified in Minnesota by the decision in the case of *Johnson vs. N. W. Mutual Life Ins. Co.*, 56 Minn. 365; 59 N. W. R. 992.

In this case an infant took out a policy on his own life in the N. W. Mut. Life Ins. Co. for the sum of \$1,000, and in consideration he paid a premium of \$23.29 and semi-annually a like sum until he reached his majority, having made eight semi-annual payments amounting to \$186.32. On reaching majority he gave the company notice in writing that he had become of age, and that he elected to avoid the contract of insurance and offered to return the policy to the company, and demanded the return of the moneys which he had paid, which the company refused to return to him, and for the recovery of this money he brings this action.

On a re-argument of this case, the question considered was simply this: "Can the plaintiff recover back what he has paid, assuming that the contract was in all respects fair and reason-

able?" And after a fair and thorough examination of the cases the judge gives the majority opinion of the court in this language: "Our conclusion is that where the personal contract of an infant, beneficial to himself, has been wholly or partly executed on both sides, but the infant has disposed of what he received, or the benefits recovered by him are such that they cannot be restored, he cannot recover back what he has paid, if the contract was a fair and reasonable one and free from any fraud or bad faith on the part of the other party, but the burden is on the other party to prove that such was the character of the contract; that if the contract involve elements of actual fraud or bad faith the infant may recover all he paid or a part of it, but if the contract involve no such elements and was otherwise reasonable and fair, except that what the infant paid was in excess of the value of what he received, his recovery should be limited to such excess. It seems to us that this will sufficiently protect the infant, and at the same time do justice to the other party."

In this case the infant was allowed to recover, upon the ground that the company had not sufficiently proved that its contract was fair and reasonable, and that the defendant had entered into it in good faith in all respects with the infant.

To the same general effect is the holding in *Adams vs. Beall*, 6 Atl. 644.

**Rights of Innocent Third Parties.** When an infant sells either real or personal property and it passes from the hands of his vendee into the hands of an innocent third party, the infant may nevertheless disaffirm his contract in accordance with the previous rules and retake the property.

(a) *Real Estate.*

*Jenkins vs. Jenkins*, 12 Ia. 195.

*Miles vs. Lingerian*, 24 Ind. 385.

*Sims et al. vs. Smith et al.*, 86 Ind. 577.

(b) *Personalty.*

*Downing vs. Stone*, 47 Mo. App. 144.

In this last case one Downing exchanged with one H. a mare for certain patent rights, \$45 in cash, and an order for some patent churns. Subsequently H. sold the mare to one

Stone, who did not know of Downing's infancy and who gave value for the mare.

Before maturity Downing rescinded the contract with H., tendered him the \$45 and the other property which he had received, and demanded the mare. H. refused the tender and then Downing brought action against Stone for the conversion of the mare, he having refused to give her up.

The court held in this case the following.

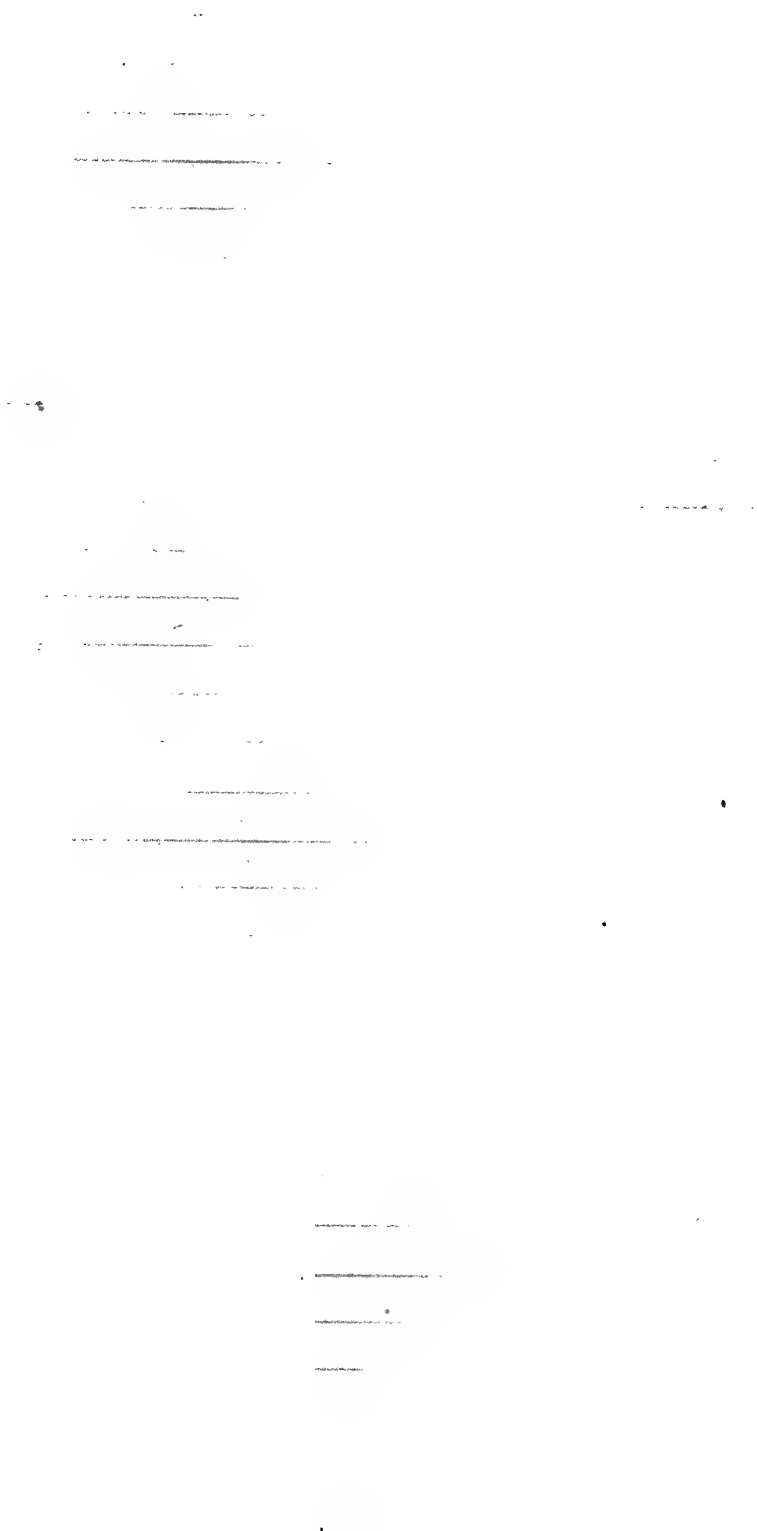
(1) Disaffirmance was rightly made to H., with whom Downing had contracted, and not to Stone, who had themare.

(2) That Downing could follow the mare into the hands of an innocent third party and rightfully claim it as his own, and

(3) That it was not necessary to tender anything to Stone.

FURTHER DEDUCTIONS AND DICTA.







100



## PERSONS NON COMPOS MENTIS.

A second class of persons whom the law disqualifies in part from entering into valid contracts consists of those who are known as *non compos mentis*, i. e., persons who have not a competent measure of mental power to understand the nature and effects of their agreements, and whom the law therefore protects as it does infants by regarding their so-called contracts valid or voidable as the case may require.

Persons with no reason whatever can, of course, make no agreement, because an agreement consists in the *assent* of two or more minds to the same thing; but persons that have a certain degree of mental power, but who are incapacitated by insanity, lunacy, drunkenness, weakness of mind from old age and other causes, may enter into the form of a contract with some degree of understanding perhaps, but not with a sufficient degree to comprehend the nature and effects of their agreements, and consequently such incapacitated persons are held by the law to be incapable of making valid contracts generally, as persons of sound mind are permitted to do. As we shall see hereafter, their agreements in form are not contracts, but only *quasi-contracts*.

We shall now consider in order those persons known as *non compos mentis* whose agreements may ripen into contracts, either valid or voidable according to the capacity, the conditions and circumstances of the person affected with such infirmity. And for the purpose of ascertaining how far such persons may make contracts we shall examine the following cases.

\*LaRue vs. Gilkyson, 4 Pa. St. 375.

\*Lancaster Bank vs. Moore, 78 Pa. St. 407.

\*Allis vs. Billings, 6 Met. 415.

\*Hovey vs. Hobson, 53 Me. 451.

\*Arnold vs. Richmond Iron Works, 1 Gray 434.

\*Boyer vs. Berryman, 123 Ind. 451.

\*Dexter vs. Hall, 15 Wall. 9.

\*Inh., Middleborough vs. Rochester, 12 Mass. 364.

Burnham vs. Kidwell, 113 Ill. 425.

\*Henderson vs. McGregor, 30 Wis. 78.

\*Stone vs. Wilbern, 83 Ill. 105.

- \*Brown vs. Fisher, 4 John. Ch. 440.
- \*Gore vs. Gibson, 13 M. & W. 623.
- \*Carpenter vs. Rogers, 61 Mich. 384.
- \*Williams vs. Inabnet, 1 Bailey 343.
- \*Joest vs. Williams, 42 Ind. 565.
- \*Wadsworth vs. Sharpsteen, 8 N. Y. 388.
- Abbott vs. Creal, 56 Ia. 175.
- Matthiessen vs. McMahon, 38 N. J. L. 537.
- Shoulters vs. Allen, 51 Mich. 529.
- Young vs. Stevens, 48 N. H. 133.
- Lilly vs. Waggoner, 27 Ill. 395.
- Carrier vs. Sears, 4 Allen 336.
- Hallett vs. Oakes, 1 Cush. 296.
- Valpey vs. Rea, 130 Mass. 384.
- Howe vs. Howe, 99 Mass. 88.
- Gibson vs. Soper, 6 Gray 279.
- Scanlan vs. Cobb, 85 Ill. 296.
- Eaton vs. Eaton, 37 N. J. L. 108.
- Griswold vs. Butler, 3 Conn. 227.
- Wait vs. Maxwell, 5 Pick. 217.
- VanDeusen vs. Sweet, 51 N. Y. 378.
- In re Desilver, 5 Rawle 111.
- Farley vs. Parker, 6 Ore. 105.
- Buckey vs. Buckey, 18 S. E. 383.
- Bush vs. Breinig, 113 Pa. St. 310; 6 Atl. 86.
- Reinskopf vs. Rogge, 37 Ind. 207.
- Flach vs. Gottschalk, 41 Atl. 908.
- Haines vs. Scott, 54 N. Y. S. 844.
- Hosler vs. Beard, 43 N. E. 1040.
- \*Molton vs. Camroux, 6 Eng. Rul. Cases, 71.

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

## ACTION

6

## ISSUE

## LAW

## FACTS

## DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**



**ISSUE**

**LAW**

**FACTS**

**DECISION**



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

## ACTION

## ISSUE

## LAW

## FACTS

## DECISION



**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION \

ISSUE

LAW

•

FACTS

.

.

•  
•  
•

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**Deductions and Dicta from Cases Examined.**

From the foregoing cases and others cited and examined we deduce the following propositions regarding the contracts which may be entered into by persons *non compos mentis*.

**Valid Contracts.** (1) All persons belonging to this class, if not under guardianship, may make valid contracts for necessities, and what are necessities may be determined by the station, estate, conditions and circumstances of the infirm person.

La Rue vs. Gilkyson, 4 Pa. St. 375.

Van Horn vs. Hann, 39 N. J. L. 207.

(2) This class of persons may also make valid contracts for necessities, even though they are under guardianship, if the guardian fails or neglects to provide such necessities for them.

Sawyer vs. Lufkin, 56 Me. 308.

Sceva vs. True, 53 N. H. 627.

(3) When persons *non compos mentis* enter into a contract with other persons, and such other persons do not know of their infirmity, and such infirmity has not been judicially declared, and such contract is in all ways fair and reasonable and so far executed that the parties cannot be put *in statu quo*, then such an agreement cannot be disaffirmed by the infirm party, and consequently it is a valid and binding contract.

Lancaster Bank vs. Moore, 78 Pa. St. 407.

Schaps vs. Lehner, 54 Minn. 208.

Gribben vs. Maxwell, 34 Kan. 8; 7 Pac. 584.

Young vs. Stevens, 48 N. H. 133.

Molton vs. Camroux, 6 Eng. Rul. Cases 71.

Flach vs. Gottschalk Co., 41 Atl. 908.

Fay vs. Burditt, 81 Ind. 433.

Some courts go so far as to say that even if the parties can be put *in statu quo*, and the insane party offers to return all that he received, yet if the contract has been wholly executed it will not be set aside at the instance of the insane person and hence it is valid.

Rhoades vs. Fuller, 40 S. W. R. 760.

Haines vs. Scott, 54 N. Y. S. 844.

But there are other cases, not now generally followed, which hold that even if the sane party does not know of the other's insanity, and has dealt fairly with him, yet the party of unsound mind may avoid the contract even without returning the consideration, on the ground that the ignorance of the sane party cannot make up for the incapacity of the insane one.

Gibson vs. Soper, 6 Gray 279.

Rea vs. Bishop, et. al., 59 N. W. R. 555.

Hovey vs. Hobson, 53 Me. 451.

**Voidable Contracts.** All the other contracts entered into by persons *non compos mentis* are regarded by the law as voidable.

(1) If a party enters into an agreement with an insane person knowing of his insanity at the time of the transaction, such contract may be avoided by the insane person, his heirs and legal representatives, without putting the other party *in statu quo*.

Crawford vs. Scovell, 94 Pa. St. 48.

Gibson vs. Soper, 6 Gray 279.

(2) The executed contract of a person *non compos mentis*, made in good faith on the part of the other party, is nevertheless voidable if the insane person can and will put the other party *in statu quo*.

Schaps vs. Lehner, 54 Minn. 208.

(3) A promissory note signed by a person under such disability, though negotiable in form, is not protected in the hands of bona fide holders for value against the defense of insanity. The purchaser takes such note charged with notice of the maker's disability.

Hosler vs. Beard, et. al., 43 N. E. 1040.

**Ratification—When.** The insane party, within a reasonable time after restoration to soundness of mind, may either ratify or disaffirm his voidable contracts.

Arnold vs. Richmond Iron Works, 1 Gray 434.

Cummings vs. Henry, 10 Ind. 109.

**Ratification—How.** The ratification, or disaffirmance, by an insane person after his restoration, may be effected by any



words or acts which evince clearly his purpose to stand by his contract or to annul it.

Hovey vs. Hobson, 53 Me. 451.

Arnold vs. Richmond Iron Works, 1 Gray 434.

It is the *act* of disaffirmance which destroys the voidable contract, and not the proceedings which may be taken to give force and effect to the disaffirmance after it has been made.

Ashmead vs. Reynolds, 127 Ind. 441 ; 26 N. E. 80.

Louisville Ry. Co. vs. Herr, 135 Ind. 591 ; 35 N. E. 556.

**Effects of Disaffirmance.** (1) The effect of the disaffirmance of such contracts, upon the parties themselves, is to leave them in the same relation to each other, respecting their property rights, as they would have been had no such contract ever been made.

(2) The effect of such disaffirmance as to third persons, even *bona fide* purchasers of the property, is to authorize the insane person, his heirs or legal representatives, to retake such property as though no original contract had been made.

Hovey vs. Hobson, 53 Me. 451.

Tucker vs. Moreland, 1 Am. Lead. Cases, 225-259.

Somers & A. vs. Pumphrey et. al., 24 Ind. 231-238.

Dewey vs. Algire et. al., 55 N. W. R. 276.

But some courts have held that buying land from an insane person is a fraud upon him, and therefore that third parties are protected against him when his original contract is disaffirmed ; but the cases seem to overlook the important fact that while there may be fraud on the part of the sane party, the insane person has no capacity to guard against the fraud.

Odom et. al. vs. Riddick et. al., 7 L. R. A. 118.

**Void.** While we have seen in the case of infants and also in the case of persons *non compos mentis* that their so-called void contracts are no contracts at all, yet we find many cases considering what the judges term void contracts, and there are many of them, especially in connection with persons *non compos mentis*.

(1) Such a person's contracts are declared to be void when the person is legally under the guardianship of another.

Wadsworth vs. Sharpsteen et. al., 8 N. Y. 388.

Carter vs. Beckwith et. al., 128 N. Y. 312.

(2) So the power of attorney executed by a person *non compos mentis* has been declared to be void.

Dexter vs. Hall, 15 Wall. 9.

(3) So in some States, the deed of an insane person has been held to be absolutely void.

In Re Desilver, 5 Rawle 111.

Farley vs. Parker, 6 Ore. 105.

Van Deusen vs. Sweet, 51 N. Y. 378.

(4) The marriage contracts of persons *non compos mentis* are held to be void, and children born of such a marriage are illegitimate.

Inhab. of Middleborough vs. Inhab. of Rochester, 12 Mass. 364.

(5) And it has been held that no action is necessary to annul such marriage contract in order to restore the parties to their original position.

Yet it may be wise to have it annulled in order to protect property rights.

Rawdon vs. Rawdon, 28 Ala. 565.

Town of Mountholly vs. Town of Andover, 11 Vt. 226.

Inhab. of Goshen vs. Inhab. of Richmond, 4 Allen 458.

The contracts of marriage being held absolutely void, they cannot of course be ratified.

Ward et al. vs. Dulaney et al., 23 Miss. 410-33.

#### Contra

Cole vs. Cole, 5 Sneed (Tenn.) 57.

1 Bish. Mar. & Div. 139.

But by statute in some states such marriages are made voidable, and hence must be set aside.

Wiser and wife vs. Lockwood's Est., 42 Vt. 720.

**General Statements.** Where the guardianship of a person has been practically abandoned, though not officially, and the ward contracts after becoming sane, such agreement has been held to be binding notwithstanding the guardianship.

Thorpe et al. vs. Hanscom et al., 66 N. W. R. 1.

Elston vs. Jasper, 45 Tex. 409.

**Torts.** Persons *non compos mentis* are, like infants, responsible for their torts.

Morse vs. Crawford, 17 Vt. 499.

**Lucid Interval.** If the insane person has a lucid interval, his contract made during such interval is, of course, valid, so far as the question of his capacity can affect it.

Lilly vs. Waggoner, 27 Ill. 395.

**Monomania.** And if the party is insane on one subject only and is sane upon other subjects, he may contract respecting the latter while he would be disqualified from doing so in matters pertaining to the former subject.

Lozear vs. Shields, 23 N. J. E. 509.

Burgess vs. Pollock, 53 Ia. 273.

West vs. Russell, 48 Mich. 74.

Riggs vs. Am. Tract Society, 95 N. Y. 503.

**Drunkards.** It is generally conceded that a drunkard's contracts for necessities are valid; and by analogy and some dicta it also seems that a contract made by a person in a state of intoxication, which intoxication is unknown by the other party and the intoxicated person has been dealt fairly with and is not under guardianship at the time that the contract was made, will not be set aside at the instance of the drunkard unless he can and will put the other party *in statu quo*. In other words the rule applicable to insane persons applies to intoxicated persons, and hence the drunkard's contract made under such circumstances, where the sober party cannot be put *in statu quo*, is valid and hence will not be set aside by the court.

Youn vs. Lamont, 56 Minn. 216.

But if land, conveyed by a person while intoxicated, passes into the hands of an innocent third party, such innocent party will be protected by the courts, the case being analogous to the one where a person through fraud or duress is induced to convey land which subsequently comes into the hands of innocent third parties.

Youn vs. Lamont, 56 Minn. 216.

Deputy vs. Stapleford and Willis, 19 Cal. 302.

In the case of the voidable contracts of a drunkard, before he can recover his property, he must rescind his contract by returning or offering to return the consideration which he received.

Carpenter vs. Rogers, 61 Mich. 384.

Bush vs. Breinig, 113 Pa. St. 310; 6 Atl. 86.

McGuire vs. Callahan, 19 Ind. 128.

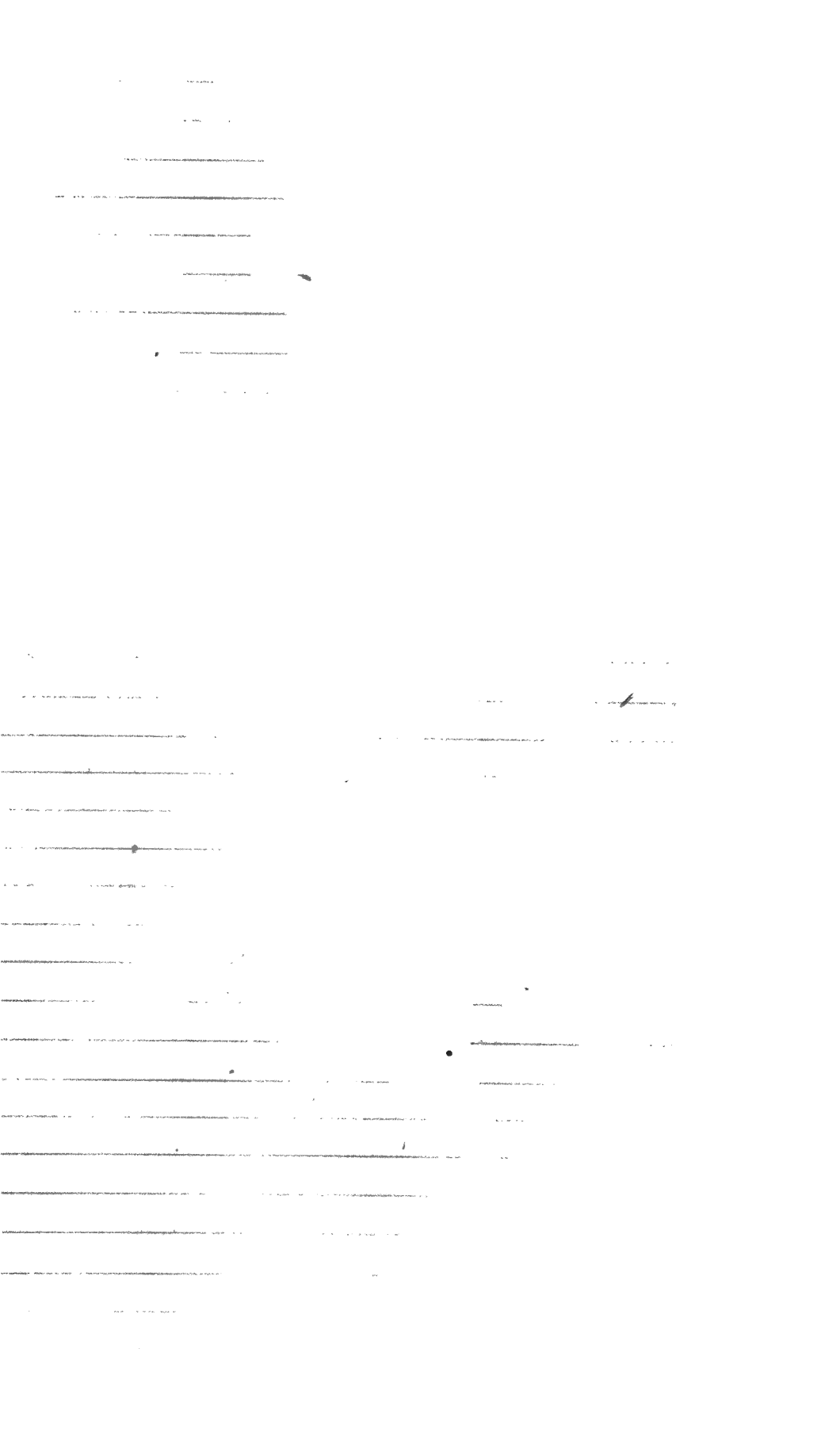
Joest vs. Williams, 42 Ind. 565.

But a contract made by a person so intoxicated as not to know what he is doing, whereby the other party with knowledge of the drunkard's condition and for a grossly inadequate consideration gets possession of the drunkard's property, will be set aside in equity; and if without any fault of the drunkard he is unable to restore the consideration, provision for its repayment may be made in the final decree, but the return of said consideration is not a condition precedent to his recovering what he has parted with.

Trackrah vs. Hass, 119 U. S. 499.

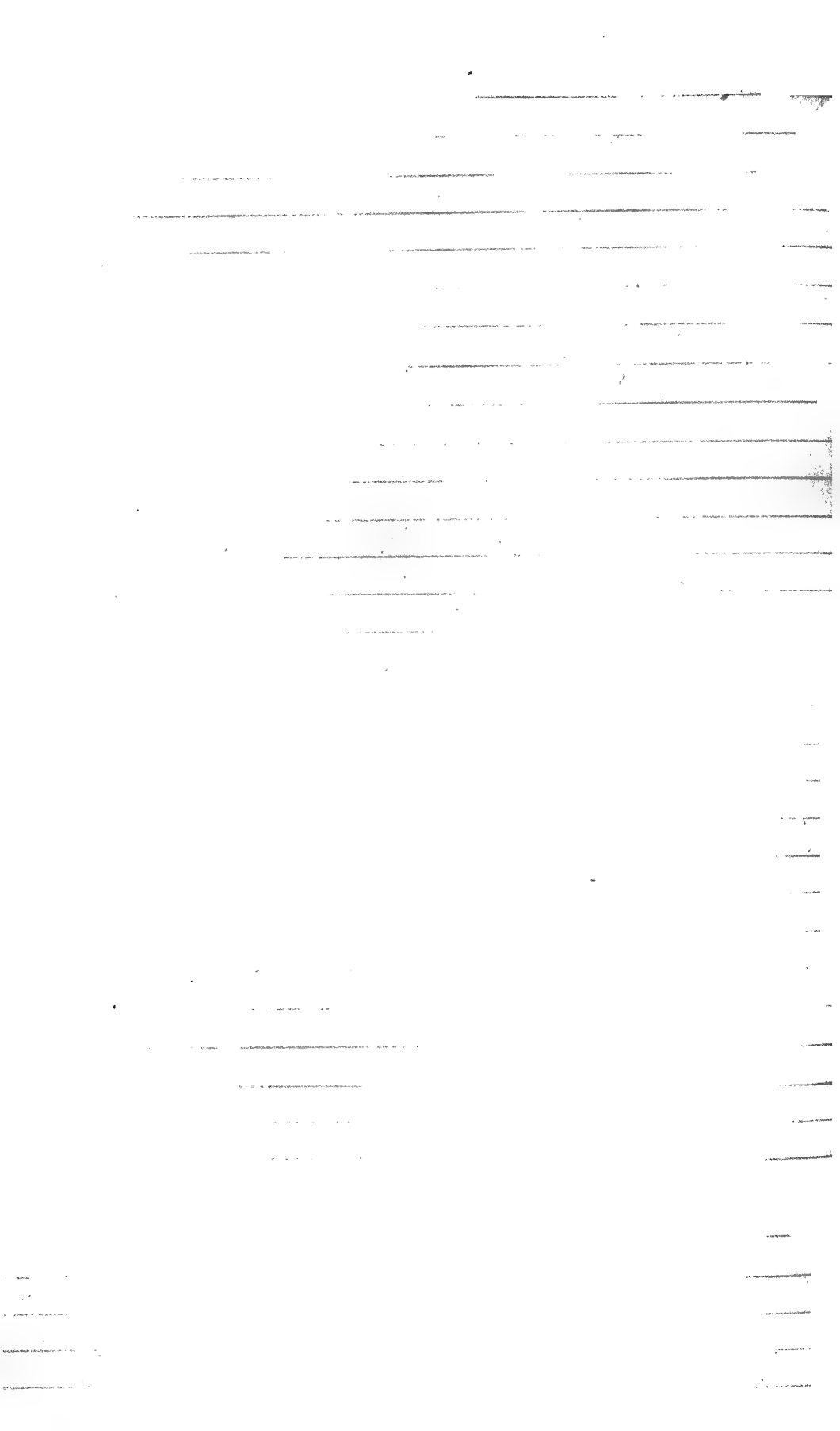
Query: Suppose the drunkard, in such contract, wastes the money he receives before becoming sober, and has no other property. Shall the drunkard stand the loss, or the sober party, who put the money into the drunkard's hands knowing him to be drunk at the time?

#### FURTHER DEDUCTIONS AND DICTA.



$$P_{\text{eff}} = \frac{P_{\text{max}}}{1 + \left( \frac{C}{K_m} \right)^n}$$







## ALIENS AND OTHERS.

Besides infants and the various classes of persons *non compos mentis* and drunkards, the common law also disqualified aliens to a certain extent from entering into contracts with citizens of another state; and also the common law disqualified married women, outlaws, persons attainted, persons excommunicated, convicts, and some others, from making valid contracts.

How far these parties are disqualified by common law and statute we shall learn from examining the following cases:

\*Taylor vs. Carpenter, 3 Story's Rep. 463.

\*Scholefield vs. Eichelberger, 7 Peters 586.

\*McCrillis vs. Bartlett, 8 N. H. 569.

\*Tracy vs. Keith, 11 Allen 214.

\*N. W. Mut. Life Ins. Co. vs. Mary C. Allis, 23 Minn. 337.

Flynn vs. Messenger, 28 Minn. 208.

Wagner vs. Nagel, 33 Minn. 348.

Bergh vs. Warner, 47 Minn. 250.

Farrar vs. Bessey and wife, 24 Vt. 89.

Griswold vs. Waddington, 16 John. 438.

Ins. Co. vs. Hillyard et al., 37 N. H. 444.

Zacharie vs. Godfrey et al. Admr's., 50 Ill. 186.

Cohen vs. Ins. Co. 50 N. Y. 610.



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

-

ISSUE

LAW

. 2

FACTS

,

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

### Deductions and Dicta from Cases Examined.

From the foregoing cases and others cited and examined we deduce the following propositions:

**Alien Friends.** (a) As a general rule alien friends may contract on the same basis as citizens, and the protection of the courts is afforded them.

(b) Alien friends could not hold real estate at the common law except to a very limited extent, but that matter is now generally regulated by statute in the states of the American republic.

**Alien Enemies.** (a) The doctrine is not to be questioned at this day that, "during a state of hostilities the citizens of the hostile states are incapable of contracting with each other."

(b) Whether an alien enemy can make a valid contract for necessities, or for money to enable him to get to his own country, has not been authoritatively settled.

(c) All commerce and voluntary intercourse between citizens of the insurrectionary states and districts of the Union during the recent civil war were suspended and any acts of intercourse inconsistent with the state of hostilities were unlawful.

**Married Women.** (a) At the common law as a general rule, with some exceptions, the attempted contract of a married woman was absolutely void.

Jackson vs. Vanderheyden, 17 John. 167.

Tracy vs. Keith, 11 Allen 214.

Smith vs. Plomer, Sheriff, 15 East 607.

Morris and wife vs. Norfolk & A., 1 Taunt. 212.

Howe & Al. vs. Wildes et Ux., 34 Me. 566.

Pond vs. Carpenter & Al., 12 Minn. 430.

(b) It has also been held that it makes no difference whether she is living with her husband or not; but where the husband compels the wife to live separate from him, by abandoning her or forcing her away, and such separation is permanent and the wife is unprovided for by the husband, it has been

held that she might contract in regard to her personal services and property.

Harris et al. vs Taylor, 3 Sneed (Tenn.) 536.

Love et al. vs. Moynahan, 16 Ill. 277.

(c) If the wife has wilfully deserted her husband and is living in open adultery with another person, this fact even will not render her contracts valid; and if after her husband's death she promises to pay the debt she so endeavored to contract, the promise is without consideration and will not be enforced. A void contract cannot be ratified.

Meyer vs. Haworth, 8 Adolph & Ellis 467.

(d) But where, however, the husband deserts his wife absolutely and leaves the state, it has been held in this country quite generally that she might then contract, sue, and be sued as a single woman.

Gregory vs. Pierce, 4 Metc. 478.

Cheek vs. Bellows, 17 Tex. 613.

Rogers vs. Phillips & wife, 8 Ark. 366.

(e) If she receive money by gift or in payment for her services and lend it, her husband and not she herself has a right to recover it; and so if she sell anything her husband has a right to recover the price. "In general whatever she earns is as a servant and for him, for in law her time and her labor as well as her money are his property."

Legg vs. Legg, 8 Mass. 99.

Winslow vs. Crocker & Trustee, 17 Me. 29.

McDavid et al. vs. Adams, 77 Ill. 155.

Yopst vs. Yopst, 51 Ind. 61.

(f) And it has been held that the proceeds of their joint labor belong to the husband and not to the wife, extending even to her personal apparel purchased with the earnings of both parties.

Reynolds vs. Robinson et al., 64 N. Y. 589.

Hawkins vs. Providence & Worcester Railroad, 119 Mass. 596.

(g) But while at the common law as a general rule married women could not make valid contracts, the various states

of the Union have generally emancipated her from this disability, and now allow her to contract in most cases as though she were a single woman.

N. W. Mut. Life Ins. Co. vs. Allis, 23 Minn. 337.

Gen. St. '73 c. 69, § 2.

**Outlaws.** Outlaws, persons attainted, and persons excommunicated, were at the common law disqualified in part at least from making valid contracts; but such persons not being known in our country this common law disability need not be considered.

1 Parsons on Contracts, § 423.

**Seamen.** The United States has passed laws for the protection of seamen, securing to them certain rights and privileges, and practically disqualifying such persons from contracting in violation of the rights so secured.

1 Parsons on Contracts, § 427.

Metcalf on Contracts, § 111.

U. S. Rev. St., § 4509 et seq.

**Convicts.** It has been stated by some authors that a person convicted of treason, or felony, was at common law incapable of making valid contracts during the continuance of his conviction, and that his contracts made previous to his conviction could not be enforced by him, but that they might be enforced by an administrator appointed for the purpose by the crown. But this does not seem to be the case in the United States, where the matter is generally regulated by state constitutions and legislation.

Platner vs. Sherwood et al., 6 John. Ch. 118.

In re Estate of Nerac, 35 Cal. 392.

Willingham et al. vs. King et al., 2 So. 851.

The Dade Coal Co. vs. Haslett, 83 Ga. 549.

A convict in prison under a proper sentence may in the absence of any statutory restrictions enter into contracts, and sue or be sued thereon; but in some states where it is provided that a person under sentence is deprived of his civil rights, or is civilly dead, he will be incapable of making contracts, or of suing or being sued.

Willingham et al. vs. King et al., 2 So. 851.

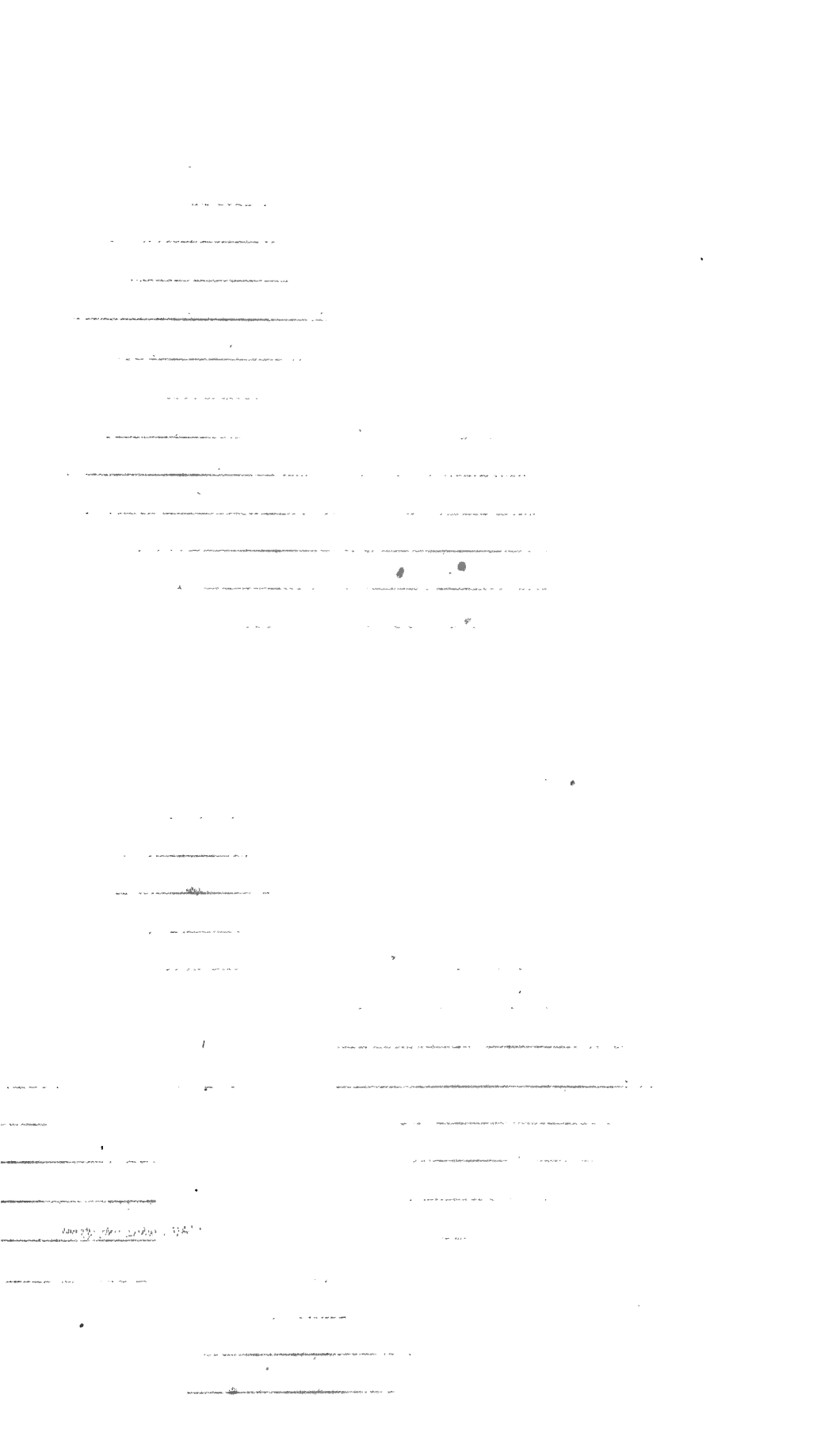
Williams et al. vs. Shackelford, 11 S. W. 222.

In Minnesota a life sentence robs a person of all his civil rights, except that his person is protected by law; from which it would follow that a person sentenced for life in the penitentiary would be incapable of contracting, but that persons sentenced for a term less than life would not be affected with that disability.

Minn. Penal Code, § 526-27. .

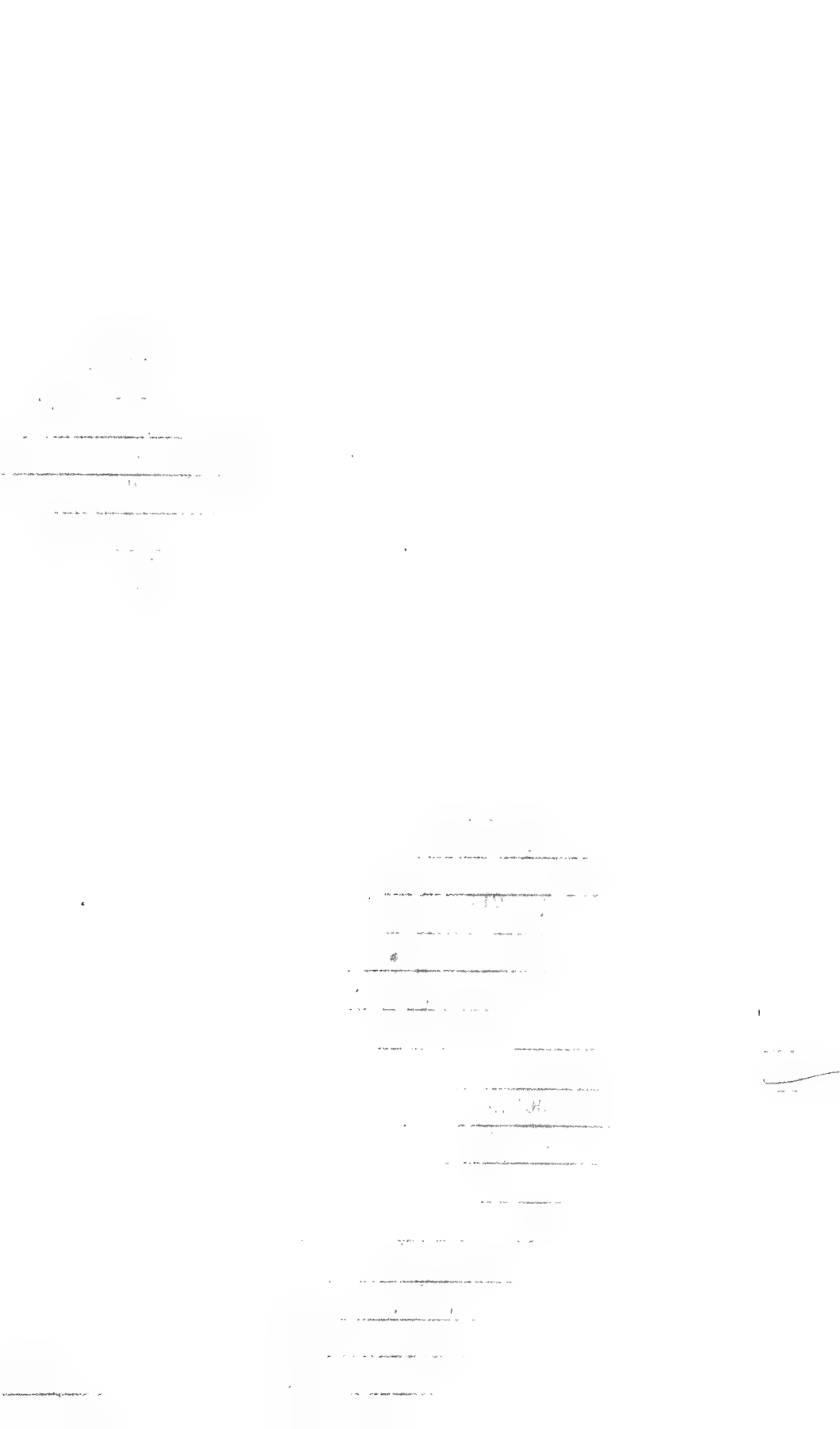
**Corporations.** Public and private corporations, called artificial persons, and joint-stock companies are authorized by statute to make contracts under certain circumstances and within the extent of his statutory permission they are enabled to contract, to sue and be sued. How far these artificial persons are permitted to contract will be considered when these subjects are brought before the class for investigation.

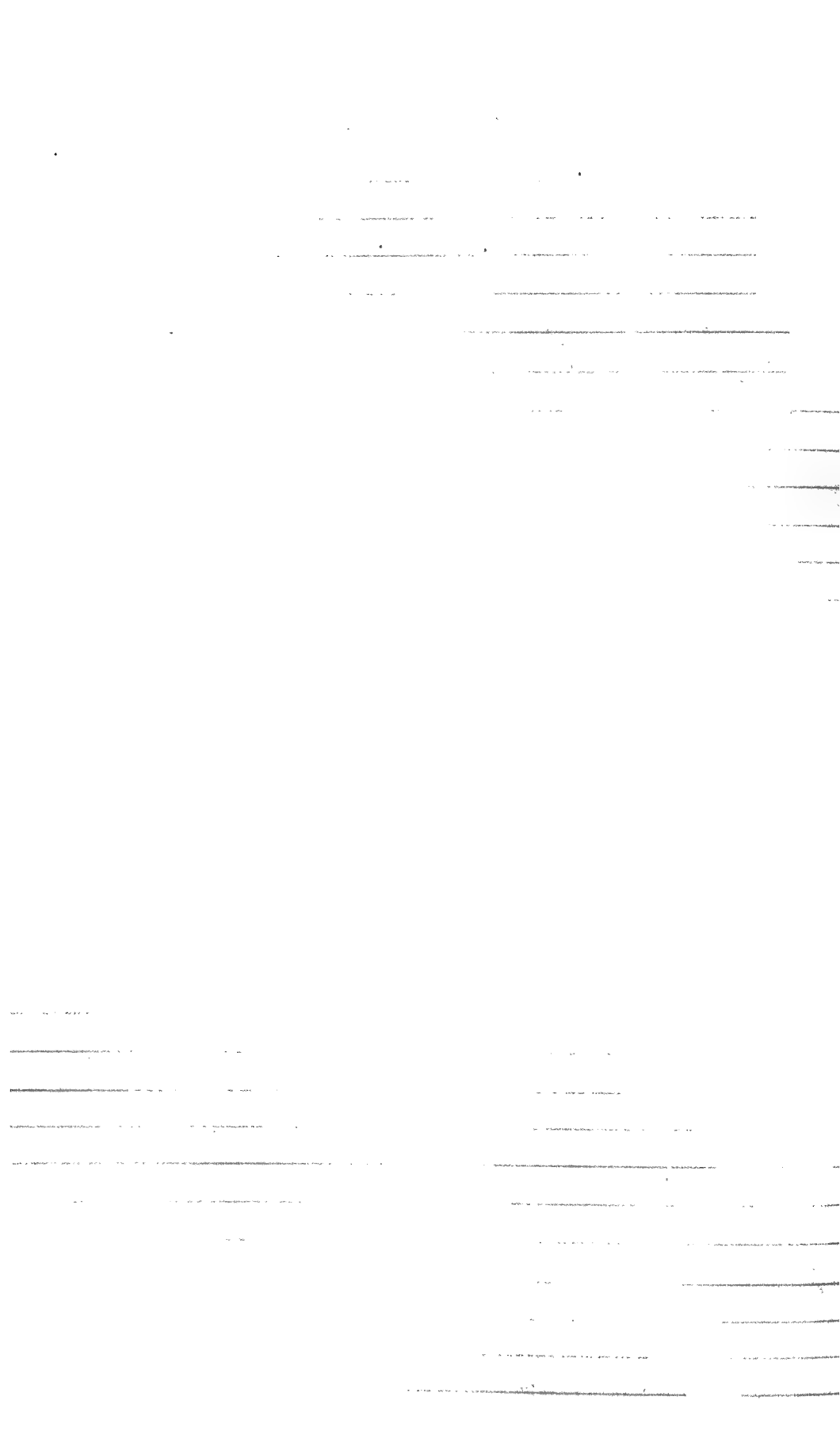
FURTHER DEDUCTIONS AND DICTA.











## PART II.

## ASSENT.

An agreement implies parties and also the mutual assent of those parties to the same thing in the same sense.

Having considered what persons can enter into agreements, we will now consider the assent of those parties essential to a contract.

In the formation of a contract there must be an offer from one party, accepted in every particular by the other. This offer and acceptance constitute the assent of the parties; and this assent must be mutual, free from fraud, duress, mistake, and other vitiating facts, and also concurrent. We will consider these three characteristics of that assent, necessary in the creation of a contract.

## MUTUAL ASSENT.

By mutual assent is meant the meeting of the minds of the parties to the same thing in the same sense; and for the various doctrines of assent, and the rules of law governing offers and acceptances, we will consider the following cases:

- \*Bruce vs. Bishop, 43 Vt. 161.
- \*Minn. etc. R. R. Co. vs. Mill Co., 119 U. S. 149.
- \*Bruce vs. Pearson, 3 Johns. 534.
- \*Esmay vs. Gorton, 18 Ill. 483.
- \*McClurg vs. Terry, 21 N. J. Eq. 225.
- \*White vs. Corlies, 46 N. Y. 467.
- \*Day vs. Caton, 119 Mass. 513.
- \*Reif vs. Paige, 55 Wis. 496.
- \*Wentworth vs. Day, 3 Metc. 352.
- \*Taylor vs. Mer. Fire Ins. Co. 9 How. 390.
- \*Lewis vs. Browning, 130 Mass. 173.
- \*Trevor vs. Wood, 36 N. Y. 306.
- \*Weiden vs. Woodruff, 38 Mich. 130.
- \*Shuey vs. U. S. 92 U. S. 73.
- \*Payne vs. Cave, 3 T. R. 148.

Gibbs vs. Linabury, 22 Mich. 479.  
Corning vs. Colt, 5 Wend, 254.  
Brown vs. R. R. Co., 44 N. Y. 79.  
Corcoran vs. White, 117 Ill., 118; 7 N. E. 525.  
Harlow vs. Curtis, 121 Mass. 320.  
MacLay vs. Harvey, 90 Ill. 525.  
Keller vs. Holderman, 11 Mich. 248.  
Huck vs. Flentye, 80 Ill. 258.  
Pierson vs. Morch, 82 N. Y. 503.  
1st Nat. Bk. vs. Hart, 55 Ill. 62.  
Howard vs. Daly, 61 N. Y. 362.  
Washburn vs. Fletcher, 42 Wis. 152.  
Haas vs. Myers, 111 Ill. 421.  
Tucker vs. Lawrence, 56 Vt. 467.  
Quick vs. Wheeler, 78 N. Y. 300.  
Lee vs. Flemingsburg, 7 Dana 28.  
Russell vs. Stewart, 44 Vt. 170.  
Dawkins vs. Sappington, 26 Ind. 199.

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

201

ISSUE

LAW

FACTS

DECISION

201

ACTION

.

ISSUE

LAW

.

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

.  
.

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION



ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



### Deductions and Dicta from Cases Examined.

From the foregoing cases and others cited and examined, we deduce the following propositions:

Every contract is the result of an offer and acceptance. The assent of the parties—the *aggregatio mentium*—is an absolutely indispensable element in an actual contract.

Minn. etc. R. R. Co. vs. Mill Co., 119 U. S. 149.

**Assent or Aggregatio Mentium.** The assent of the parties must be expressed, so that each party may know that the other intends to be bound by the agreement.

White vs. Corlies, 46 N. Y. 467.

*How Expressed.* (1) By words.

The offer and acceptance may both be expressed by words, when the contract is known as an express contract.

Tayloe vs. Mer. Fire Ins. Co., 9 How. 390.

In order that a contract may result the offer and acceptance must be expressed in terms that are clear and certain, or capable of being reduced to certainty.

Marble et al. vs. Standard Oil Co., 48 N. E. R. 783.

Erwin vs. Erwin, 25 Ala. 236.

Sherman et al. vs. Kitsmiller, 17 Serg. & Rawle 45.

In this last case, an intestate had promised his niece that if she would live with him until her marriage he would give her one hundred acres of land, but did not indicate its locality or value. The niece assented to this offer and seeks to enforce it, whereupon the court decides that the contract is void for uncertainty.

**Intention.** The assent must be expressed seriously, with the intention of the parties to change their legal relations; otherwise the agreement cannot ripen into a contract.

McClurg vs. Terry, 21 N. J. Eq. 225.

When their assent is clearly expressed in words by the parties with intent of changing their legal relations to each other there is such mutuality of assent as is necessary to constitute an express contract.

(2) **By Conduct.** The "aggregatio mentium," or assent of the parties, may be inferred wholly or in part from their conduct, and then the contract is said to be implied. The distinction between express and implied contracts "relates simply to the manner in which the parties have expressed their agreement, and consequently affects the nature of the evidence by which the agreement can be proved rather than the nature of the contract itself."

Day vs. Caton, 119 Mass. 513.

Hobbs vs. Massasoit Whip Co., 158 Mass. 194.

Cicotte vs. St. Anne's Church, 60 Mich., 552.

City Council, etc. vs. Water Works, 77 Ala. 248.

Parsons, Vol. 1, 6, n.

From the foregoing cases it appears that in order that a contract may result the following facts are necessary :

1st. He who makes an offer by rendering services, supplying goods, or by conferring a benefit in any other manner upon the offeree, must do so expecting a compensation therefor; otherwise, being gratuitous, the benefaction is a gift.

2d. The other party, or offeree, must know, or have reason to believe that compensation was expected, otherwise there could be no inference that he intended to pay for it.

3d. And the offeree must either make no objection to having the benefits conferred upon him, or if he does object but accepts the thing offered, then his assent is sufficiently expressed and he is bound by an implied contract.

Cooper vs. Cooper & Al., 147 Mass. 370.

Knowlton vs. Inhabs. of Plantation No. 4, 14 Me. 20.

**Contra,**

Higgins vs. Breen, Ad., 9 Mo. 493.

**Parent and Child.** But where the parties to the transaction are parent and child, or members of the same family, the presumption is that the services rendered by one to the other are gratuitous.

Curry vs. Curry, 114 Past. 367; 7 Atl. 61.

Hall vs. Finch, 29 Wis. 278.

Pellage vs. Pellage, 32 Wis. 136.

Tyler vs. Burrington, Ad., 39 Wis. 376.

Wells vs. Perkins, 43 Wis. 160.

Mills vs. Joiner, 20 Fla. 479.

Morton vs. Rainey, 82 Ill. 215.

**Reward.** Again an offer may be made, as in the case of a reward offered for finding lost property or for the apprehension of a criminal, and the acceptance may be expressed by doing the thing for which the reward was offered.

Reif vs. Paige, 55 Wis. 496-503.

Wentworth vs. Day, 3 Metc. 352.

Gilmore vs. Lewis, 12 Oh. 281.

Furman vs. Parke, 21 N. J. L. 310.

**Silence or Non-action.** An acceptance cannot be inferred from mere silence, or non-action, except where circumstances make it one's duty to speak or act; then from his silence or non-action his assent may be properly inferred.

Royal Ins. Co. vs. Beatty, 12 Atl. 607.

O'Neal vs. Knippa, 19 S. W. R. 1020.

In this case, the plaintiff having bought the defendant's lands, told the defendant that he might leave his large herd of cattle thereupon for \$100 per month. The defendant replied that that was too much, but never took the cattle away. It was held that by leaving the cattle there he accepted plaintiff's offer.

In case of implied contracts the assent of the parties is just as indispensable as it is in the case of express contracts. The evidence by which an express contract is proved consists in the words used by the persons making it, and in case of an implied contract the evidence consists in the conduct of the parties under the existing circumstances.

**Offer.** As before seen, the assent of the parties, the *aggregation*, implies an offer on the one side and an acceptance on the other.

The offer may be made by word or by conduct. An order for goods, sent to a merchant, is in effect an offer to buy; the time-schedules published by a railroad company are offers to transport passengers according to the terms of the advertisement; a bid, made at an auction, is an offer; the operating of street-cars is an offer to any one, that the company will carry

the person for the usual fare; taking a seat at a hotel table is an offer to pay the usual price for the meal; the publication of a promise of reward for the apprehension of a criminal, or for doing anything else, is an offer to pay the sum named for the performance of the services designated.

Levy vs. Green, 8 E. & B. 575.

Denton vs. G. N. Ry. Co., 5 E. & B. 860.

Sears vs. Eastern Ry. Co., 14 Allen 433.

Payne vs. Cave, 3 T. R. 148.

Day vs. Caton, 119 Mass. 513.

Fogg vs. Portsmouth Atheneum, 44 N. H. 115.

Shuey vs. U. S., 92 U. S. 73.

Williams vs. Carwardine, 4 B. & Ad. 621.

✓

**Revocation.** An offer may be withdrawn at any time before acceptance, or it may lapse by death or insanity of either party, or by the expiration of the time allowed in the offer for an acceptance, or by its non-acceptance within a reasonable time after the offer is made, or by failure to accept in the manner prescribed in the offer as to the place of acceptance or otherwise. The offer may be withdrawn by a formal notice of withdrawal, or by a sale of the thing offered if the sale is known to the other party, or by other acts evincing the offerer's intention to withdraw it.

Weiden vs. Woodruff, 38 Mich. 130.

Pratt Admx. vs. Trustees, etc., 93 Ill. 475.

Potts vs. Whitehead, 20 N. J. Eq. 55.

Loring & Al. vs. City of Boston, 7 Metc. 409.

Eliason et al. vs. Henshaw, 4 Wheat. 225.

Stevenson etc. vs. McLean, 5 Q. B. D. 346. 1879-80.

Dickinson vs. Dodds, 2 Ch. D. 463. 1875-6.

Coleman vs. Applegarth, 68 Md. 21; 11 Atl. 248.

Gillespie vs. Edmonston, 11 Hump. 553.

And in case the offer is made through the public press, it may also be revoked in the same public manner, at any time before the offer is fully acted upon.

Shuey vs. U. S., 92 U. S. 73.

An offer, accompanied with a promise to keep it open for a specified time, may nevertheless be revoked before the time ex-

pires, if not accepted, and if there is no consideration for the promise.

Routledge vs. Grant, 4 Bing. 653.

Head vs. Diggon, 3 Man. and Ryland 97.

Cooke vs. Oxley, 3 T. R. 653.

Stensgaard vs. Smith, 43 Minn. 11.

But the revocation must be actually communicated to the offeree, in order to nullify the offer.

Tayloe vs. Merchants Fire Ins. Co., 9 How. 390.

Patrick vs. Bowman, 149 U. S. 411.

Kemper vs. Cohn, 47 Ark. 519; 1 S. W. R. 869.

Coleman vs. Applegarth, 11 Atl. 284.

**Rejection.** If the offer is not revoked and does not lapse, it may then be either rejected or accepted by the offeree. He may reject it expressly by word, or he may reject it by making a counter proposal, or by any action or non-action which evidences his dissent.

Minn. etc. Ry. vs. Col. Roll. Mill, 119 U. S. 149.

Hackley vs. Patrick, 3 John. 534.

**Acceptance.** If not revoked or rejected the offer may be accepted; and the acceptance may be made by words, or by any act which expresses to the offerer an unqualified assent to the proposal, as sending goods in response to an order containing an offer for them, paying taxes for another at his request accompanied with a promise for his reimbursement, and the performance of work requested with a promise of reward.

Crook vs. Cowan, 64 N. C. 743.

Briggs vs. Sizer, 30 N. Y. 647-652.

Allen vs. Chouteau, 14 S. W. R. 869.

Wentworth vs. Day, 3 Metc. 352.

Reif vs. Paige, 55 Wis. 503.

Dent et al. vs. North Am. Steamship Co. 49 N. Y. 390.

**General Propositions.** The offer, revocation, rejection, or acceptance may be made through the medium of the public mail, telegraph, or telephone.

*Telegraph—*

Tayloe vs. Mer. Fire Ins. Co., 9 How. 390.

Trevor vs. Wood, 36 N. Y. 306.

Alford vs. Wilson, 20 Fed. 96.

Trench vs. Hardin Co. Canning Co., 48 N. E. R. 64.

Brauer et al. vs. Shaw et al., 46 N. E. R. 617.

*Telephone—*

Bank of Lemoore vs. Gulart, 54 Pac. R. 1111.

Stillwell vs. Ocean Steamship Co., 39 N. Y. S. 131.

Oskamp vs. Gadsden, 52 N. W. R. 718.

If the offer is made by mail, the contract is concluded when the acceptance is despatched, duly addressed and stamped; and if the offer is made by wire, the contract is concluded when the acceptance is duly delivered to the telegraph company, in the absence of any request or agreement to communicate otherwise.

Tayloe vs. Mer. Fire Ins. Co., 9 How. 390.

Brauer et al. vs. Shaw et al., 46 N. E. R. 617.

Query: If, however, the offer is made by mail and accepted by wire, or made by wire and accepted by mail, is the contract concluded when the acceptance is despatched, or when it is received by the offerer, in the absence of any request or agreement as to how the negotiation shall be conducted?

Perry vs. Mt. Hope Iron Co., 5 Atl. 632.

Stevenson, etc. vs. McLean, 5 Q. B. Div. 346.

Phenix Ins. Co. vs. Schultz, 80 Fed. 337.

Where an offer is made by letter sent from one state to an offeree in another state, and there accepted by the offeree by letter, the contract is regarded as completed in the state where the acceptance is given, and is controlled by the laws of that state, in the absence of any other controlling fact.

And on principle the same rule would hold as to contracts made by telegraph, and perhaps by telephone.

McIntyre vs. Parks et al., 3 Metc. 207.

If the offer and revocation are both received at the same time, and are both read before an acceptance is posted, the revocation is effectual; but if the offer is read and duly accepted before the withdrawal is read, on principle it would seem that the acceptance concluded the contract.

Dunmore vs. Alexander, 9 Shaw, Dunlap and Bell 190.

An offer may be made to a specific person, or to the public in general, as in case of a reward offered for the return of lost property.

Wentworth vs. Day, 3 Metc. 352.

If a specific sum is offered as a reward for the return of lost property, the finder has a lien upon the property so found; but if a liberal reward is offered, then he has no such lien.

Wentworth vs. Day, 3 Metc. 352.

Wilson vs. Guyton, 8 Gill 213.

Wood & Al. vs. Pierson, 45 Mich. 313.

**How Accepted.** This general offer can be accepted, so the assent of the minds, essential to a contract, is complete, only by the acceptor's full performance of the work for which the reward is offered.

Loring & Al. vs. City of Boston, 7 Metc. 409-412.

Where the court says, "The offer of a reward is a proposal made by one party, and does not become a contract until acted upon by the performance of the service by the other, which is the acceptance of such offer, and constitutes the agreement of minds essential to a contract."

This offer, like others, must be accepted within a reasonable time after the offer is made.

Loring & Al. vs. City of Boston, 7 Metc. 409.

Shank vs. City of Lancaster, 26 Atl. 1067.

But in the state of Connecticut it has been held that the offer of reward for the apprehension of a criminal is good until the Statute of Limitations runs against the crime committed.

In the matter of Kelly, 39 Conn. 159.

But the person who accepts this offer of reward, by doing that for which the reward is offered, must know at the time he renders the service that this offer of reward has been made.

Howland vs. Lounds et al., 51 N. Y. 604.

Fitch & Al. vs. Snedaker, 38 N. Y. 248.

C. & A. R. R. Co. vs. Sebring, 16 Ill. App. 181.

Stamper vs. Temple et al., 6 Humph. 115.

**Contra**

The Auditor vs. Ballard, 9 Bush. 573.

Dawkins vs. Sappington, 26 Ind. 199.

**Pro Rata.** Again, where one offered a reward of \$200 for the return to him of a roll of bank bills, and one-half of them were returned, the court held that the finder should receive his reward pro rata.

Symmes vs. Frazier, 6 Mass. 344.

But where a reward was offered for the apprehension of two criminals, and one was apprehended, the court held that as the offer was for both, the apprehension of one was not an acceptance of the offer and that the person apprehending the criminal should receive no part of the reward.

Blain et al. vs. Pacific Exp. Co., 6 S. W. R. 679.

✓ **Consideration.** The consideration for the promise to pay a reward offered is the performance of that for which the reward was offered; until that is done there can be no contract.

Gilmore vs. Lewis, 12 Oh. 281.

Furman vs. Parke, 21 N. J. L. 310-313.

In this last case the court says: "Prior to the performance of the services there was no contract, and the defendant was at liberty to retract his offer. But the performance of the services, however trivial or however inadequate in point of value to the remuneration offered, constituted in itself a valuable consideration for the contract and rendered the offer, which was before voluntary, binding upon the defendant, and the performance a legal duty."

Train vs. Gold, 5 Pick. 379-384.

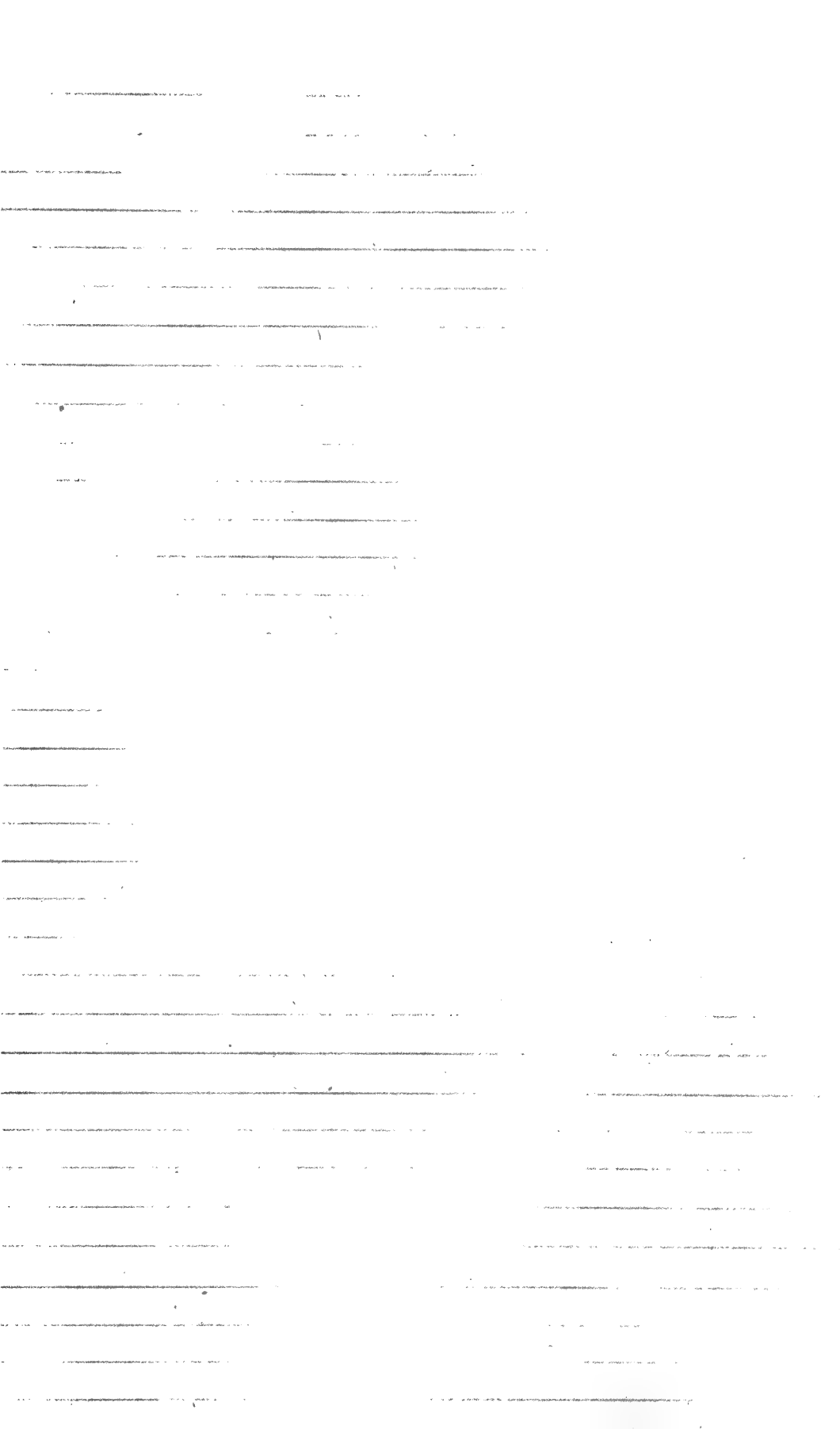
✓ **Assignment.** An offer cannot be assigned by the person to whom it is made without the consent of the offerer.

Boulton vs. Jones & Al., 2 H. & N. 564.

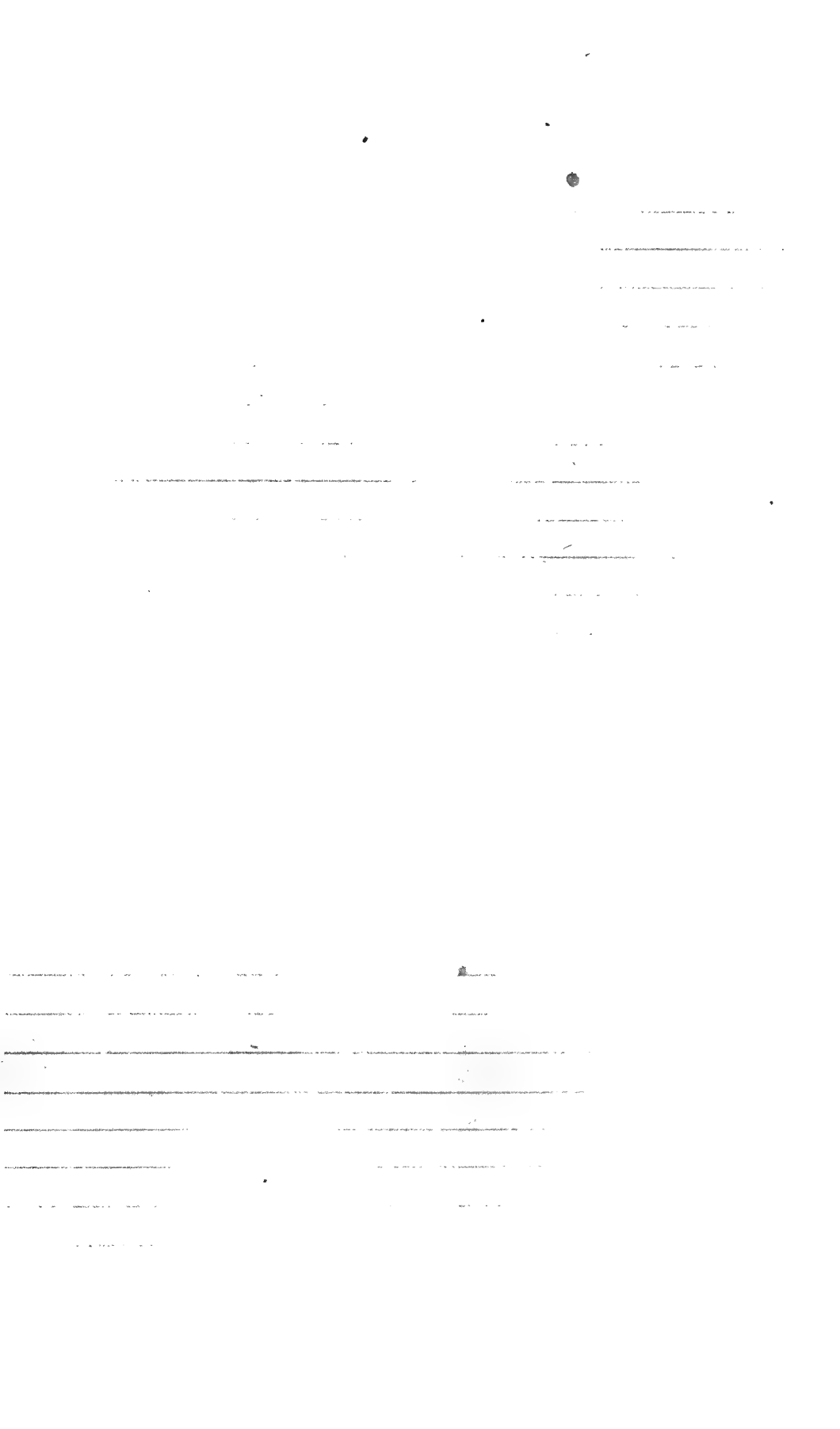
Boston Ice Co. vs. Potter, 123 Mass. 28.

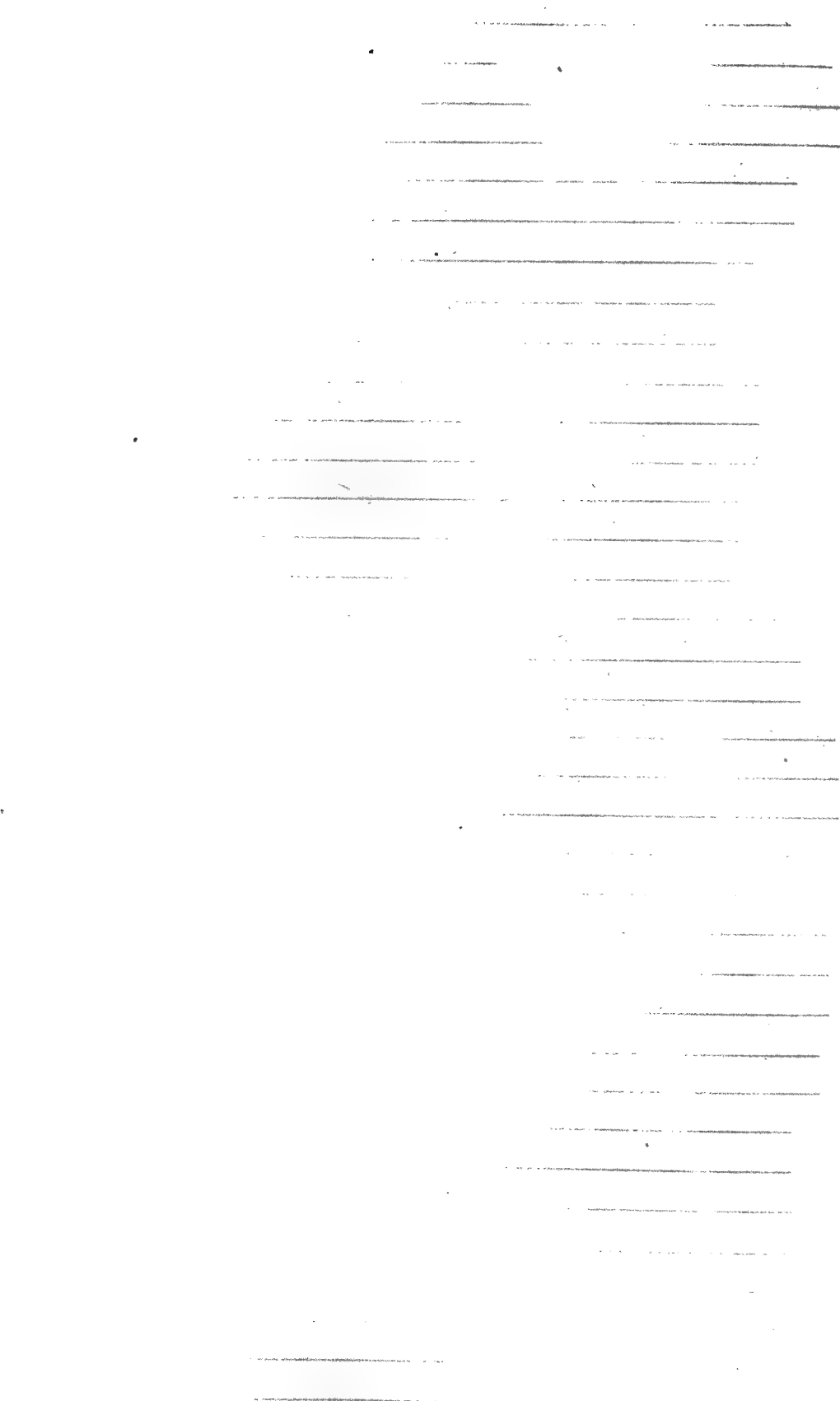
#### FURTHER DEDUCTIONS AND DICTA.











### ASSENT—FREE OR RECIPROCAL.

The assent necessary to a valid contract must be, not only mutual, but it must be free from duress, mistake, undue influence, misrepresentation and fraud.

**Duress.** Duress consists in actual or threatened imprisonment of or other harm to the person or property of the one upon whom it is practiced. Hence it is of two kinds, duress by imprisonment, and duress per minas.

Duress by imprisonment consists in the actual imprisonment of the party by restraining his personal liberty, either in prison or in some other manner. The gist of duress of imprisonment consists in the *unlawful restraint* placed upon the person; and if he assents to an offer to relieve himself from this unlawful restraint, such assent is not free and can only result in a voidable contract.

Duress per minas consists in such *fear*, aroused by threats to imprison a person, or to do him personal violence, or to inflict some other harm upon him or his property, as is sufficient to overcome the will of him upon whom the duress is practiced.

For the purpose of ascertaining the principles of law, pertaining to the subject of duress, we shall examine the following cases:

- \*Foshay vs. Ferguson, 5 Hill 154.
- Taylor vs. Jaques, 106 Mass. 291.
- Tapley vs. Tapley, 10 Minn. 448.
- Moore vs. Adams, 8 Oh. 372.
- Bush vs. Brown, 49 Ind. 573.
- Seymour vs. Prescott, 69 Me. 376.
- \*Brown vs. Pierce, 7 Wall. 205.
- \*Eddy vs. Herrin, 17 Me. 338.
- Taylor vs. Cottrell, 16 Ill. 93.
- Wilcox vs. Howland, 23 Pick 167.
- Kelley vs. Noyes, 43 N. H. 209.
- Soule vs. Bonney, 37 Me. 128.
- Smith vs. Atwood, 14 Ga. 402.
- Felton vs. Gregory, 130 Mass 176.

- Prichard vs. Sharp, 51 Mich. 432.  
Crowell vs. Gleason, 10 Me. 325.  
\*Schommer vs. Farwell et al., 56 Ill. 542.  
Bowker vs. Lowell et al., 49 Me. 429.  
\*Guilleaume vs. Rowe et al., 94 N. Y. 268.  
Alexander vs. Pierce, 10 N. H. 494.  
Fisher vs. Shattuck, 17 Pick. 252.  
Davis vs. Luster, 64 Mo. 43.  
\*Watkins vs. Baird, 6 Mass. 506.  
\*Seiber vs. Price, 26 Mich. 518.  
Meek vs. Atkinson, 1 Bailey (S. C.) 84.  
Bane vs. Detrick, 52 Ill. 19.  
Richardson vs. Duncan, 3 N. H. 508.  
Shaw vs. Spooner, 9 N. H. 197.  
Hackett vs. King, 6 Allen 58.  
\*Harmon vs. Harmon, 61 Me. 227.  
\*Spaids vs. Barrett et al., 57 Ill. 289.  
Miller vs. Miller, 68 Pa. St. 486.  
Williams vs. Williams, 63 Md. 371.  
Adams vs. Stringer, 78 Ind. 175.  
\*Inhab. Whitefield vs. Longfellow, 13 Me. 146.  
Flanigan vs. Minneapolis, 36 Minn. 406.  
Perkins vs. Trinka, 30 Minn., 241.  
\*Hackley vs. Headley, 45 Mich. 569.  
Cable vs. Foley, 45 Minn. 421.  
\*First Nat. Bank vs. Bryan, 62 Ia. 42.  
Town of Sharon vs. Gager, 46 Conn. 189.  
\*Robinson vs. Gould, 11 Cush. 55.  
\*Harris vs. Carmody, 131 Mass. 51.  
Osborn vs. Robbins, 36 N. Y. 365.  
Veach vs. Thompson, 15 Ia. 380.  
Worcester vs. Eaton, 13 Mass. 369.

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

1

LAW

FACTS

1. The first of the two questions presented is whether the Commission's decision to grant a stay of execution of the death sentence of the appellant is valid. The Commission's decision is based on the fact that the appellant is a minor at the time of the crime. The Commission's decision is valid.

2

DECISION

2/3/2017



ACTION

ISSUE

LAW

FACTS

DECISION

ISSUE

LAW

ACTS

ECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**Deductions and Dicta from Cases Examined.**

From the foregoing cases and others cited and examined we deduce the following propositions:

**Duress of Imprisonment.** Duress of imprisonment, such as will vitiate the assent necessary to a valid contract, may be accomplished by unlawfully putting the person in actual confinement behind bolts and bars, by unlawfully restraining his personal movements by superior physical force, or by any other unlawful restraint upon his personal freedom. This imprisonment or restraint must be unlawful and it may be inflicted either without or by means of legal process.

**Without Legal Process.** The assent given to a contract, in order to throw off such *unlawful restraint* inflicted without legal process, is not free, but is given under duress.

Foshay vs. Ferguson, 5 Hill. 154.

Magoon vs. Reher et al., 45 N. W. R. 112.

**With Legal Process.** If one is arrested by an officer under a warrant issued *without probable cause*, his assent to a contract, given in order to escape such restraint, is not free, but given under duress.

Watkins vs. Baird, 6 Mass. 506.

Strong vs. Grannis & Brown, 26 Barb. 122.

**Void Process.** If one is arrested by an officer, under a *void or unlawful process*, though issued for probable cause, and he gives his assent to a contract in order to escape such restraint, such assent is not free, but given under duress.

Guillaume vs. Rowe et al., 94 N. Y. 268.

**Improper Purpose.** If a person is arrested by an officer, under a lawful process, issued on a probable cause, but for the *improper purpose* of inducing him to give his assent to a contract, then the assent so given in order to escape the restraint thus inflicted upon him, is not free. It is unlawful to use a criminal process to enforce a civil right.

Schommer vs. Farwell, 56 Ill. 542.

Seiber vs. Price, 26 Mich. 518.

Richardson vs. Duncan, 3 N. H. 508.

Phelps & Johnson vs. Zuschlag et al., 34 Tex. 371.

It may also be noticed, that, if one is arrested by an officer under a lawful warrant issued for probable cause and for proper purpose, but while thus in lawful custody he enters into a contract with any one in order to effect his escape from the custody of the law, such contract is absolutely void, not upon the ground of duress, though often put upon that ground, but rather on the ground of illegality of consideration.

Hackett vs. King, 6 Allen 58.

Henderson vs. Palmer, 71 Ill. 579.

**Duress per Minas.** As in duress of imprisonment it is the unlawful *physical restraint* that vitiates the assent, so in duress per minas it is the *fear* generated by the threats that vitiates the assent.

At common law threats, in order to vitiate assent to a contract, must have excited in the mind of the person threatened a fear of loss of life, of loss of member, a fear of mayhem, or fear of imprisonment. The cases are numerous which hold that a threat to take one's life will vitiate the assent given to a contract in order to avoid such a result.

Brown vs. Pierce, 7 Wall 205.

Dimmitt vs. Robbins, 12 S. W. 94.

The authorities which lay down the rule that a threat to rob one of a member, or to commit mayhem upon him, are text-book assertions quite largely, unsupported by any well-defined legal decisions bearing clearly upon the point.

But the doctrine that a threat to put one in prison may awaken such fear in the mind of the person menaced as will vitiate his assent to a contract made to escape such a result is well established by judicial holdings. And the threat to imprison may be made when a warrant has already been issued, and hence the imprisonment is immediate; or such threat may be made without a warrant having been issued, when the imprisonment must of necessity be more remote.

**Without Warrant Issued.** Where one threatens to prosecute another on a criminal charge, but no legal process has been issued, no duress can result according to some cases, because the imprisonment is too remote to excite such fear as vitiates consent.

Buchanan vs. Sahlein, 9 Mo. App. 552.



In this case the court says: "We do not think that a threat to prosecute, addressed to a man conscious of his innocence, is such a threat as to induce in any man of ordinary firmness an overwhelming fear of immediate imprisonment \*"

\* \* . We are not aware of any case in which threats of imprisonment have been held to constitute duress, where the threat was not accompanied at least with the statement that prosecution had been begun \* \* \* and the means were immediately at hand of procuring the instant arrest and imprisonment of the person threatened."

Harmon vs. Harmon, 61 Me. 227.

Higgins vs. Brown, 78 Me. 473; 5 Atl. 269.

Certain cases also hold that if a party be charged with a crime of which he knew he was not guilty, he could not be put under duress by threats to prosecute or imprison him.

Knapp vs. Hyde, 60 Barb. 80.

Buchanan vs. Sahlein, 9 Mo. App. 552.

The weight of modern authority, however, is to the effect that a threat to prosecute a person, or any member of his family, either with probable cause or without it, which excites such fear in the mind of the party menaced as to make his assent to a contract involuntary, will constitute such duress as will make that contract voidable.

Cribbs vs. Sowle, 87 Mich. 347; 49 N. W. R. 587.

Morse vs. Woodworth, 155 Mass. 233.

Schultz vs. Culbertson, 46 Wis. 313.

McCormick Har. M. Co. vs. Hamilton, 73 Wis. 486.

Bryant vs. Peck & Whipple Co., 154 Mass. 460.

Hensinger vs. Dyer, 48 S. W. R. 912.

But see,

Davis vs. Luster, 64 Mo. 43.

Adams vs. Irving Nat. Bank, 116 N. Y. 606.

Thompson et al. vs. Niggley, 26 L. R. A. 803.

**With Warrant Issued.** When one assents to a contract through fear that if he does not so sign it he, or a member of his family, will be arrested as threatened, under a warrant already issued, such fear will vitiate the assent.

Bane vs. Detrick, 52 Ill. 19.

Inhab. Whitefield vs. Longfellow, 13 Me. 146.

But a threat made by letter to prosecute a person has been held not sufficient to awaken that fear which constitutes duress.

King vs. Southerton, 6 East. 125.

At common law the duress must have been practiced upon the contracting party himself.

Spaulding vs. Crawford, 27 Tex. 156.

Robinson vs. Gould, 11 Cush. 55.

But see,

Strong vs. Grannis and Brown, 26 Barb. 122.

**Development of Duress.** While at common law duress per minas was confined to cases where one feared a loss of life, or limb, or feared mayhem, or imprisonment, it has now been so extended as to include fear excited by threats to do other harmful acts to one's person or property.

**Personal Violence.** Threats of personal violence, in other respects than those already mentioned, may excite fear such as will vitiate assent.

United States, etc. vs. Huckabee, 16 Wall. 414-432.

In this case the court says: "Positive menace of battery, or of trespass to lands, or a destruction of goods, may undoubtedly be \* \* \* sufficient to overcome the mind and will of a person entirely competent in all other respects to contract, and it is clearly established that a contract made under such circumstances is as utterly without a voluntary assent of the party menaced, as if he were induced to sign it by actual violence."

McGowen vs. Bush, 17 Tex. 196.

Foshay vs. Ferguson, 5 Hill 154.

Mann vs. Lewis, 3 W. Va. 215.

Bogle vs. Hammons et al., 2 Heisk. 136.

Loomis vs. Buck et al., 56 N. Y. 462.

Central Bank, etc. vs. Copeland & ux., 18 Md. 305.

**Destruction of Property.** Threats to wrongfully destroy another's property may excite such fears as will vitiate assent.

Walker vs. Parker, 5 Cold. 476.

**Detention of Property.** Threats to wrongfully detain one's goods or other property may excite such fear as will vitiate assent.

Spaids vs. Barrett et al., 57 Ill. 289.  
 Oliphant vs. Marklin, 79 Tex. 543.  
 Motz vs. Mitchell, 91 Pa. St. 114.  
 Cobb vs. Carter, 32 Conn. 358.  
 White vs. Heylman, 34 Pa. St. 142.  
 Chase vs. Dwinal, 7 Me. 134.  
 Fuller vs. Roberts, 17 So. 359.

**Necessitous Condition.** So when one person connives and gets another into a necessitous condition financially, or knows of his embarrassments but has not himself brought it about, and then secures an unconscientious contract with the embarrassed party through his fears of the loss of his property, such fear has been held to vitiate the assent necessary to a valid contract.

Hough vs. Hunt, 2 Oh. 495.  
 Vyne vs. Glenn, 41 Mich. 112.

See also,

Hackley vs. Headley, 45 Mich. 569.

**Money Extorted Colore Officii.** So where money has been extorted under color of office, or to prevent unlawful seizure, or for the payment of excessive fees, the same may be recovered as having been paid under duress.

Clinton vs. Strong, 9 John. 370.  
 Walker vs. Ham, 2 N. H. 238.  
 McMillan vs. Vischer, 14 Cal. 232.

**Ordinary Firmness.** At the common law only such threats as would overcome the mind of a person of ordinary firmness would constitute duress, but now such threats as do actually excite fear, such as will render the assent involuntary, seem to be sufficient to constitute duress.

Parmentier vs. Pater, 13 Ore. 121; 9 Pac. R. 59.  
 Cribbs vs. Sowle, 87 Mich. 347; 49 N. W. 587.  
 Landa vs. Obert, 14 S. W. R. 297.  
 14 Am. L. Reg. (N. S.) 201.  
 15 Cent. Law Jour. 232.

**Principal and Agent.** The fears of the agent are the fears of the principal, and will vitiate assent in contracts made by the agent.

Cummings vs. Ince & Ux., 11 Q. B. 112.

McPherson vs. Cox, 86 N. Y. 472.

A. & E. Enc. L., V. 6 p. 80.

So threats made by the plaintiff's agent may produce duress. As where plaintiff procured the signature of a woman to the note sued on by informing her through the agency of her brother, that the brother would be prosecuted if she did not sign it.

Zimmerman vs. Chambers, 47 N. W. R. 946.

**Voidable.** All such contracts, whether made under duress of imprisonment or under duress per minas, are voidable and not void.

Doolittle vs. McCullough, 7 Oh. St. 299.

Lyon vs. Waldo, 36 Mich. 345.

**Ratified.** Hence they may be ratified or disaffirmed, either by words or acts, as in the case of other voidable contracts.

Doolittle & Al. vs. McCullough, 7 Oh. St. 299.

Lyon vs. Waldo, 36 Mich. 345.

Miller vs. Minor Lbr. Co., 57 N. W. R. 101.

Sanford vs. Sornborger, 41 N. W. R. 1102.

**Personal Privilege.** In all cases of duress, the duress is a personal privilege, and hence can be taken advantage of only by the person himself, his heirs and personal representatives.

Lewis vs. Bannister, 16 Gray 500.

The duress must be practiced by the other party to the contract, or by some one acting by his connivance.

Fairbanks vs. Snow, 145 Mass. 153; 13 N. E. R. 596.

Fightmaster vs. Levi, 17 S. W. R. 195.

Sherman vs. Sherman, 20 N. Y. S. 414.

**Innocent Third Parties.** Bona fide purchasers of property are, as a general rule, protected against the defense of duress, in case of conveyances of land and in case of negotiable instruments, but not so in the sale of personal chattels.

As to deeds given under duress see,

Deputy vs. Stapleford and Willis, 19 Cal. 302.

Cook vs. Moore et al., 39 Tex. 255.

Contra,

Inhab. Worcester vs. Eaton, 13 Mass. 369.

First Nat. Bank of Nevada vs. Bryan et al., 62 Ia. 42.

*Notes,*

Clark vs. Pease, 41 N. H. 414.

Farmers' and Mechanic' Bank vs. Butler, 48 Mich. 192.

Hogan vs. Moore et al., 48 Ga. 156.

Fairbanks vs. Snow, 145 Mass. 153.

Griffith et al. vs. Sitgreaves, 90 Pa. St. 161.

*Chattels,*

Belote vs. Henderson, 5 Cold. 471.

**General Propositions.** In order to vitiate the assent to a contract it must have been entered into by the party upon whom the duress is practiced by reason of the imprisonment or the threats.

Flanigan vs. City of Minneapolis, 36 Minn. 406.

Schwartz vs. Schwartz, 29 Ill. App. 516.

A threat by a judgment creditor to obtain satisfaction by a levy upon the property of his debtor will not constitute duress, it being but the exercise of his legal right.

Wilcox vs. Howland, 23 Pick. 167.

Perkins vs. Trinko, 30 Minn. 241.

FURTHER DEDUCTIONS AND DICTA.

**Mistake.** Mistake, in Jurisprudence, is of two kinds, (1) Mistake of Fact, (2) Mistake of Law; and to ascertain the principles applicable to these two kinds of mistake we will examine the following authorities:

\*Hewitt vs. Jones, 72 Ill. 218.

\*Boston Ice Co. vs. Potter, 123 Mass. 28.

Scanlon vs. Alexander, 74 N. W. R. 146.

Cundy vs. Lindsay, L. R. 3 App. Cases 459.

Gregory vs. Wendell, 40 Mich. 432.

Randolph Iron Co. vs. Elliott, 34 N. J. L. 184.

\*Gibson vs. Pelkie, 37 Mich. 380.

\*Gardner vs. Lane, 9 Allen 492.

Kyle vs. Kavanagh, 103 Mass. 356.

\*Sherwood vs. Walker, 66 Mich. 568.

Thwing vs. Hall & Ducey Lbr. Co. 40 Minn. 184.

\*Rupley vs. Daggett, 74 Ill. 351.

Goltra vs. Sanasack, 53 Ill. 456.

Upton vs. Tribilcock, 91 U. S. 45.

Dodge vs. Ins. Co., 12 Gray 65.

Gordere vs. Downing, 18 Ill. 492.

Haven vs. Foster, 9 Pick. 112.

ACTION

1. The court shall have jurisdiction over the subject matter of this case.

2. The court shall have jurisdiction over the subject matter of this case.

ISSUE

3. The court shall have jurisdiction over the subject matter of this case.

4. The court shall have jurisdiction over the subject matter of this case.

5. The court shall have jurisdiction over the subject matter of this case.

6. The court shall have jurisdiction over the subject matter of this case.

7.

8. The court shall have jurisdiction over the subject matter of this case.

9. The court shall have jurisdiction over the subject matter of this case.

10. The court shall have jurisdiction over the subject matter of this case.

LAW

11. The court shall have jurisdiction over the subject matter of this case.

12. The court shall have jurisdiction over the subject matter of this case.

FACTS

13. The court shall have jurisdiction over the subject matter of this case.

14. The court shall have jurisdiction over the subject matter of this case.

15. The court shall have jurisdiction over the subject matter of this case.

16. The court shall have jurisdiction over the subject matter of this case.

17. The court shall have jurisdiction over the subject matter of this case.

18. The court shall have jurisdiction over the subject matter of this case.

19. The court shall have jurisdiction over the subject matter of this case.

20.

21. The court shall have jurisdiction over the subject matter of this case.

22. The court shall have jurisdiction over the subject matter of this case.

23. The court shall have jurisdiction over the subject matter of this case.

24. The court shall have jurisdiction over the subject matter of this case.

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

.

ACTION

ISSUE

LAW

FACTS

▪  
.

, .

.

.

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

### **Deductions and Dicta from Cases Examined.**

From the foregoing cases and others cited and examined, we deduce the following propositions.

**Mistake of Fact.** The assent necessary to a contract must not only be mutual, and free from duress, but it must also be given by the parties intelligently. Mistake on the part of one or more parties to the agreement, as to the nature of the transaction, or the identity of one or more of the parties, or as to the existence, identity, or essential elements of the subject-matter, or as to the price of the thing sold, will so vitiate the assent that no contract can result therefrom.

**Mistake as to Existence of Subject-Matter.** A mistake as to the existence of the subject-matter, at the time the agreement is made, so vitiates the assent that no contract results; as where a negro was sold, which both parties supposed to be living at the time of the sale, but it afterwards appeared that he had cut his throat before the contract was entered into.

Franklin and Armfield vs. Long, 7 Gill & John. 407.

Hastie et al. vs. Couturier et al., 9, Exch. 102.

**Mistake as to the Nature of Transaction.** In the absence of negligence, assent given under the influence of a mistake as to the nature of the transaction, is insufficient to constitute a contract; as where one signs a bond believing it to be a petition, or signs a deed believing it to be a lease, or endorses a bill of exchange believing it to be a guaranty, or signs a note believing it to be a contract of agency. In such cases the mind does not assent to what the hand subscribes, and there is no contract whatever, even in the hands of innocent third parties.

Schuylkill County vs. Copley, 67 Pa. St. 386.

McGinn vs. Tobey & Al., 62 Mich. 252.

Foster vs. Mackinnon, L. R. 4 C. P. 704.

Hewitt vs. Jones, 72 Ill. 218.

**Distinction.** The distinction must be borne in mind between inducing a party to sign an instrument whose contents he knows, by falsely representing to him some extrinsic fact,

and inducing a party to sign an instrument by misrepresenting to him its actual contents. In the former case the contract may be voidable, in the absence of negligence, as to the innocent party, on the ground of fraud, while in the latter case the contract is absolutely void for the lack of assent.

Green vs. North Buffalo Tp., 56 Pa. St. 110.

Schuylkill County vs. Copley, 67 Pa. St. 386.

Foster vs. Mackinnon, L. R. 4 C. P. 704.

Edwards vs. Brown et al., 1 Crompt. & Jer. 307.

Mistake as to the contents of an instrument need not be mutual in order to render the contract voidable.

Moore vs. Copp, 51 Pac. 630.

**Mistake Caused by a Stranger.** Where a stranger to the contract misinforms and misleads the grantor as to the quantity of land his deed conveys, stating that it conveys much less than it actually does; and reasonably relying upon this statement the grantor executes and delivers a deed to the grantee, who acts in good faith and intending to purchase all the description includes, the grantor may nevertheless have the deed cancelled in equity on the ground that there was no mutual assent. The mind was assenting to the transfer of one quantity of land; while the hand was transferring a much larger quantity. The offer and acceptance varied. There was no consensus of minds.

De Perez vs. De Everett, 11 S. W. 388.

**Mistake as to Identity of Party.** If one enters into an agreement under the influence of a mistake as to the identity of the person with whom he is negotiating, such agreement is as a general rule void, and this is true whether the agreement is express or implied.

*Express.*

Cundy vs. Lindsay, L. R. 3 App. Cases 459.

Boulton vs. Jones, 2 Hurl & N. 564.

In this last case, "The defendants, who had been in the habit of dealing with B, sent a written order for goods directed to B. The plaintiff, who on the same day had bought B's business, executed the order without giving the defendants any notice that the goods were not supplied by B. Held, that the

plaintiff could not maintain an action for the price of the goods against the defendants.

*Implied.*

Boston Ice Co. vs. Potter, 123 Mass. 28.

Randolph Iron Co. vs. Elliott, 34 N. J. L. 184.

In this last case it is substantially held that if A purchases ore of B, and C without the knowledge or consent of A delivers his ore in the fulfillment of the contract of B, the relation of vendor and purchaser does not exist between A and C, and in such case after demand and refusal, or actual conversion of the property by A, or after he has sold the same, the tort may be waived and assumpsit maintained by C; but there cannot be, in such case, a contract either express or implied.

**Contracts Through Agents.** If one is induced to make a contract by a party, who falsely represents himself as an agent of either a disclosed or undisclosed principal, such agreement is void.

*Disclosed Principal.*

Winchester vs. Howard, 97 Mass. 303.

Barker vs. Dinsmore, 72 Pa. St. 427.

Peters Box & Lbr. Co. vs. Lesh, 119 Ind. 98.

Hamet vs. Letcher, 37 Oh. St. 356.

In this last case H, the owner of certain chattels, relying on the representation of R that he was the agent of L, agreed to sell this property to L on credit; and H believing that R was such agent delivered the chattels to him when in fact he was not the agent of L nor in fact had he any authority to purchase this property for L. On these facts it was held that the property in the chattels did not pass from H, and that L, who bought the chattels of R and converted them to his own use without knowledge of the fraud, was liable to H for their value; and the further fact that R at the time that the chattels were delivered to him paid H a part of the purchase-price therefor would make no difference except as to the amount of recovery against L.

*Undisclosed.*

Rodliff vs. Dallinger, 141 Mass. 1.

In this case one Rodliff refused to sell a quantity of wool to one C, but afterwards C purchased the same as an agent for

his undisclosed principal, and R shipped the wool to C for such principal. C, receiving the property, pledged it to the Boston Trust Co., when it became known to R that there was no undisclosed principal, but that C claimed that he had bought the property himself. On these facts it was held that there was no contract, and that R could recover the wool from the Trust Co., who of course had no title.

So also where one of the parties sells property as his own, when in fact he is the agent of the true owner, and the property is delivered to the purchaser by the agent, the true owner cannot maintain an action for the purchase-price, for there is no contract between him and the purchaser. There was no consensus of their minds.

Winchester vs. Howard, 97 Mass. 303.

A person who signs a contract, or causes the same to be signed on his behalf, is bound to know its contents, and if he cannot read the instrument himself he should procure some one else to read it to him; and neglecting to do this he will be bound by the contract as a general rule.

**Exception.** "But if the person, who asks another to sign a paper, induces him to omit reading it and to rely upon the faith of his representations, and the one signing does thus rely upon these representations and signs the instrument, that excuses him from the obligation of reading it; and if the representations are false the contract is voidable as to him so deceived."

Alexander vs. Brogley et al., 41 Atl. 691.

**False Personation.** Where one falsely impersonates another and thereby induces a person to enter into an agreement with him, the agreement so entered into is void.

Thurston vs. Blanchard, 33 Am. Dec. 702 Note.

Hardman vs. Booth, 1 H. & C. 803.

Loeffel vs. Pohlman, 47 Mo. App. 574.

In this case it was practically held that where one falsely impersonates a third person, and thus induces the owner to sell goods to him in the belief that he is such third person, no sale or transfer of title is affected; and no act of rescission is necessary in order to entitle such owner to reclaim the goods.

But see,

Edmunds et al. vs. Mer. Des. Tr. Co., 135 Mass. 283.

**Mutual Mistake as to Essential Element, Etc.** Assent given under the influence of a mutual mistake as to the existence, identity, or essential elements of the subject-matter, is insufficient to constitute a contract.

*Existence.*

Gibson vs. Pelkie, 37 Mich. 380.

Couturier vs. Hastie, 5 H. L. Cases 673.

Strickland vs. Turner, 7 Exc. 208.

*Identity.*

Raffles vs. Wichelhaus, 2 Hurl. & C. 906.

Gardner vs. Lane, 9 Allen 492.

Kyle vs. Kavanagh, 103 Mass. 356.

Irwin vs. Wilson, 15 N. E. R. 209.

*Essential Elements.*

Sherwood vs. Walker, 66 Mich. 568; 33 N. W. 919.

Thwing vs. Hall & Ducey Lbr. Co., 40 Minn. 184.

**Mistake as to Price.** Assent given by the parties, under the influence of a mutual mistake as to the price, is insufficient to constitute a contract.

Rupley vs. Daggett, 74 Ill. 351.

Mummenhoff et al. vs. Randall, 49 N. E. R. 40.

**Mistake as to Quantity.** It may also be added that where there is a mutual mistake as to the quantity of land or chattels sold, and the difference between the actual and estimated quantity is so great as to warrant the conclusion that had the truth been known the parties would not have made the transfer, the contract is at least voidable and may be rescinded.

Pratt et al., vs. Bowman et al., 17 S. E. R. 210.

Newton vs. Tolles, 19 Atl. 1092.

Wheadon vs. Olds, 20 Wend. 174.

**Mistake as to Quality.** But mistake as to the quality of the thing sold does not vitiate the contract. For one is supposed to examine the property himself and to rely upon his own judgment, and the principle of *caveat emptor* strictly applies, and especially so since the buyer could in all cases protect himself by a warranty.

Kyle vs. Kavanagh, 103 Mass. 356.

**Mistake of Law.** Mistake as to the law of the state where the contract is made does not invalidate the contract, upon the ground that every man is conclusively presumed to know the law of his own state.

Upton vs. Tribilcock, 91 U. S. 45-51.

Goltra vs. Sanasack, 53 Ill. 456-458.

**Legal Effect.** Nor will a mistake as to the legal effect of the terms employed in a contract invalidate it.

Dodge vs. Ins. Co., 12 Gray 65-72.

Gordere vs. Downing, 18 Ill. 492.

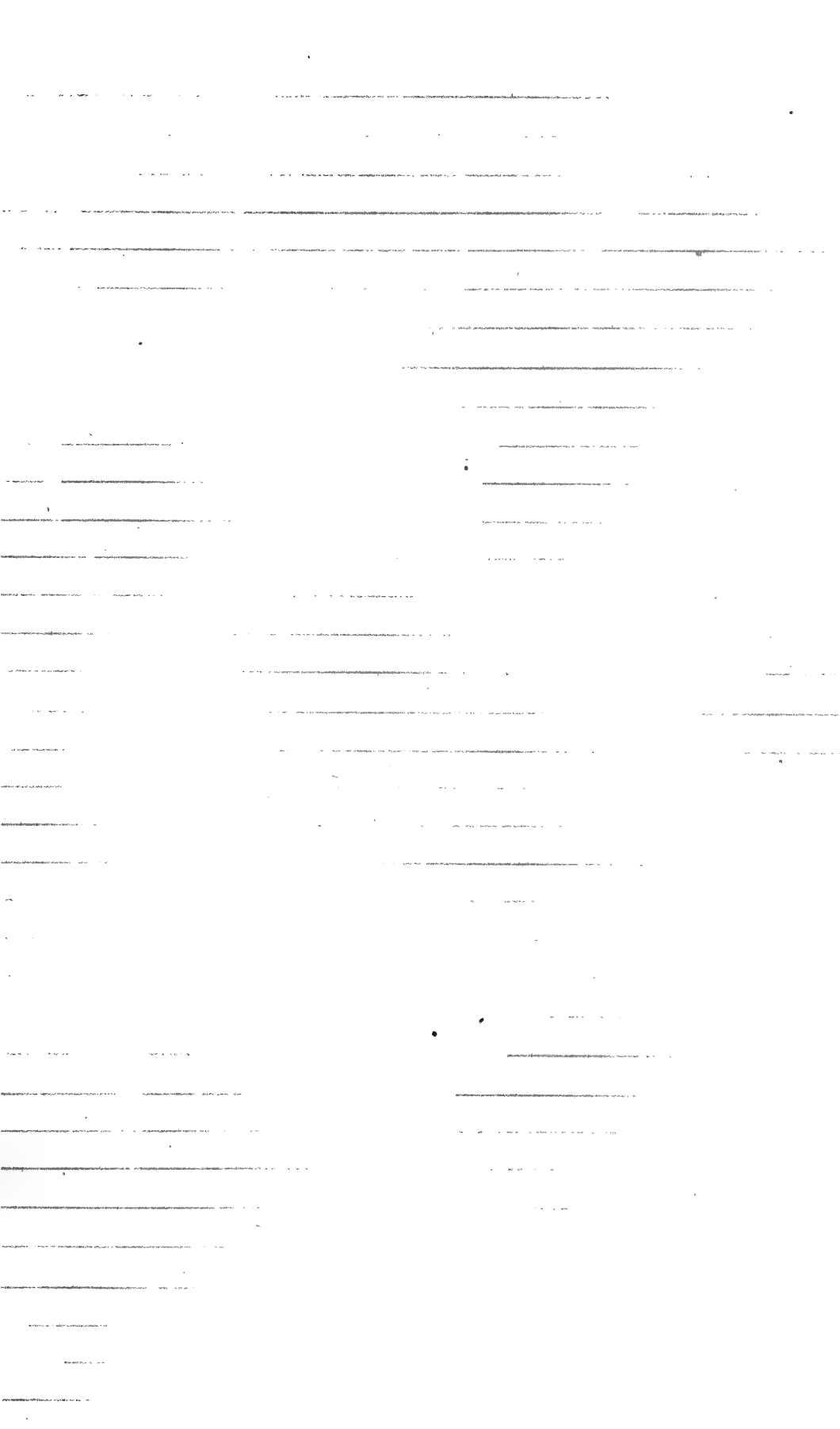
Hall vs. Wheeler, 37 Minn. 522.

**Foreign State.** While every one is presumed to know the law of his own state, he is not presumed to know the law of any foreign state: The law of a foreign state is a fact to be alleged and proved; and so money paid by mistake through ignorance of the law of another of the United States may be recovered.

Haven vs. Foster, 9 Pick. 112.

#### FURTHER DEDUCTIONS AND DICTA.





1.0

2.0

3.0

4.0

5.0

6.0

7.0

8.0

9.0

10.0

11.0

12.0

13.0

14.0

15.0

16.0

17.0

18.0

19.0

20.0

21.0

22.0

23.0

24.0

25.0

26.0

27.0

28.0

29.0

30.0

31.0

32.0

33.0

34.0

35.0

36.0

37.0

38.0

39.0

40.0

41.0

42.0

43.0

44.0

45.0

46.0

47.0

48.0

49.0

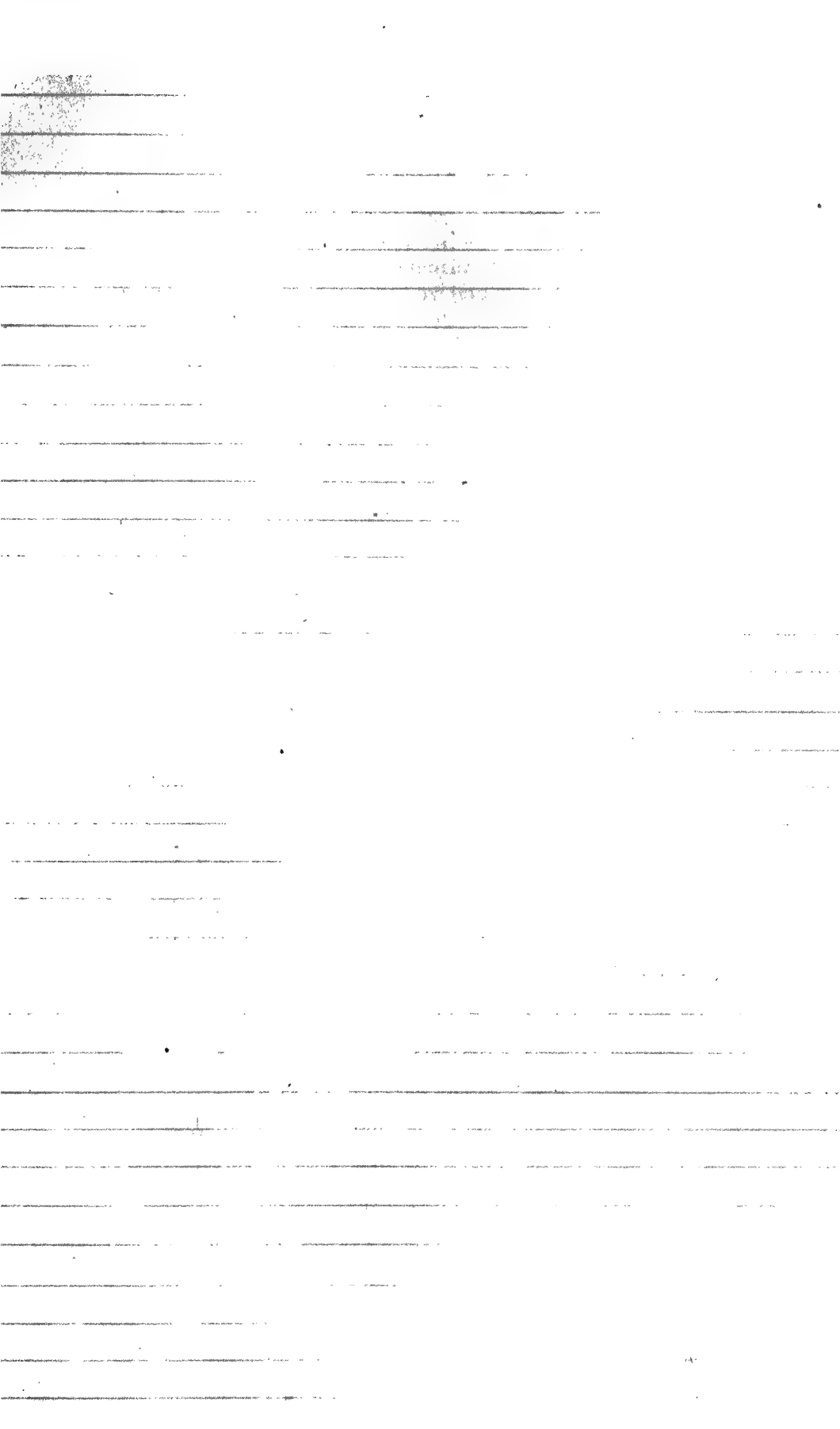
50.0

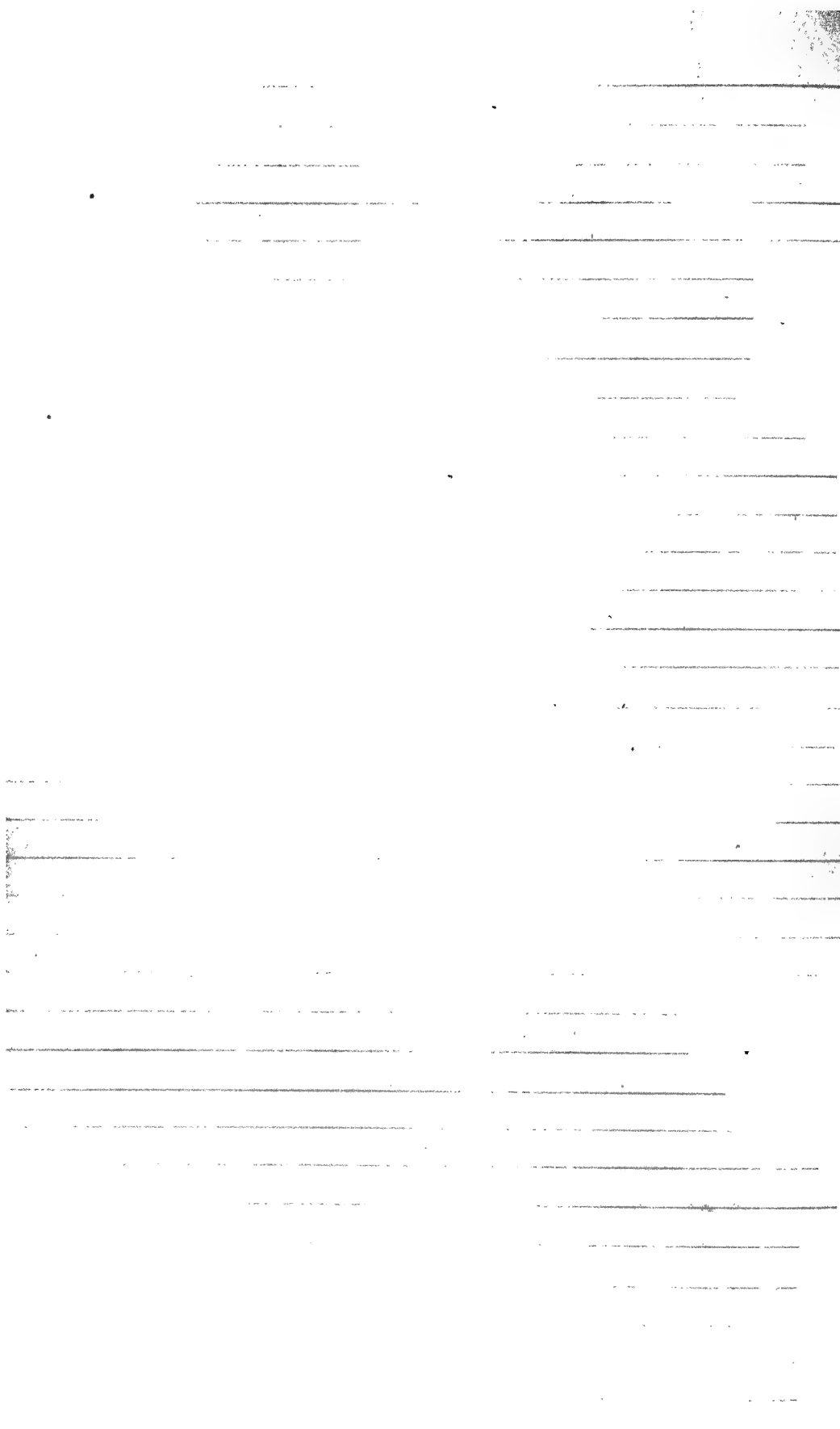
51.0

52.0

53.0

54.0





**Undue Influence.** As physical restraint is the essential element in duress of imprisonment, and fear in duress per minas, so moral *constraint* is the essential element in undue influence, as where a person is induced by importunity to assent to an agreement which he would not have assented to had he been left to act uninfluenced and freely according to his own wish.

When assent to an agreement is procured by importunity, flattery, by the force of a superior will or character upon a weaker one, or by other similar means, or is induced by the relations and circumstances of the parties—such as parent and child, guardian and ward, attorney and client, trustee and beneficiary, and many others—so that the assent is forced and not the free act of the person assenting, such agreement is said to be procured by undue influence, and is insufficient to constitute a valid contract.

The *constraint* upon the mind caused by such means is the vitiating element. If such constraint exists the assent is not free; if it does not exist, then, there is no undue influence in the legal sense of that term. Whether it exists or not, in any particular case, is a matter of fact to be determined by the conditions, circumstances and available evidence in each particular case; and for the law pertaining to this subject we will examine the following cases:

- \*Nelson's Will, 39 Minn. 204.
- \*Graham vs. Burch, 44 Minn. 33.
- Swisshelm's Appeal, 56 Pa. St. 475.
- Golding vs. Golding, 82 Ky. 51.
- Stiles vs. Stiles, 14 Mich. 72.
- Taylor vs. Taylor, 8 How. 183.
- Rau vs. Von Zedlitz, 132 Mass. 164.
- \*Jenkins vs. Pye, 12 Pet. 241.
- Miskey's Appeal, 107 Pa. St. 611.
- Berkmeyer vs. Kellerman, 32 Oh. St. 239.
- \*Wickiser vs. Cook, 85 Ill. 68.
- Ashton vs. Thompson, 32 Minn. 25.
- Wade vs. Pulsifer, 54 Vt. 45.
- \*Jennings vs. McConnel, 17 Ill. 148.
- Ryan Bros. vs. Ashton, 42 Ia. 365.
- \*Spencer & Newbold's Appeal, 80 Pa. St. 317.
- Jones vs. Lloyd, 117 Ill. 597; 7 N. E. 119.
- Marx vs. McGlynn, 88 N. Y. 357.

- Connor vs. Stanley, 72 Cal. 556; 14 Pac. 306.  
Audenreid's Appeal, 89 Pa. St. 114.  
Woodbury vs. Woodbury, 141 Mass. 329.  
Smith vs. Kay, 7 H. L. Cases 750.  
Leighton vs. Orr, 44 Ia. 679.  
Hanna vs. Wilcox, 53 Ia. 547.  
\*Rider vs. Miller, 86 N. Y. 507.  
Oard vs. Oard, 59 Ill. 46.  
Moore vs. Moore, 56 Cal. 89.  
Allore vs. Jewell, 94 U. S. 506.  
\*Hough vs. Hunt, 2 Oh. 495.  
Kelly vs. Caplice, 23 Kan. 337.  
Boynton vs. Hubbard, 7 Mass. 112.  
Parsons vs. Ely, 45 Ill. 232.

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

## ACTION

© 2006 The Authors  
Journal compilation © 2006 Blackwell Publishing Ltd

Keywords: *spillover effect*; *spillover effect group*; *parental involvement*; *parental involvement group*

## ISSUE

10. *What is the purpose of the 'if' statement in the code snippet above?*

© 2005 Blackwell Publishing Ltd *Journal of Internal Medicine* 258: 107–117

© 2004 Blackwell Publishing Ltd *Journal of Internal Medicine* 255: 105–112

## LAW

[illegible]

## FACTS

## DECISION

For more information contact: American Psychological Association, 750 First Street, N.E., Washington, D.C. 20002-4242

ACTION

ISSUE

LAW

FACTS



DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

### Deductions and Dicta from Cases Examined.

From the foregoing cases and others cited and examined we deduce the following propositions.

**Definition.** Undue influence is that power exerted by one person over the mind of another, by means of importunity, superior will force, family, fiduciary, confidential, or other similar relationships, which *constrains* the person to assent to a legal instrument against his own preference; but the influence exerted over the mind of a person "by modest persuasion and arguments addressed to the understanding, or by mere appeals to the affections, cannot properly be termed undue influence in the legal sense."

Sturtevant vs. Sturtevant, 6 N. E. R. 428.

Beith vs. Beith, 41 N. W. R. 371.

In re Disbrow's Estate, 24 N. W. R. 624.

But that influence which one exerts upon the mind of another by means of importunity, superiority of will, or by selfish persuasions, *constraining* the person to do against his will what he otherwise would not do, is what the law condemns as undue influence.

Graham vs. Burch, 44 Minn. 33. •

Rider vs. Miller, 86 N. Y. 507.

Undue influence, such as vitiates assent in contractual transactions, is most frequently found to exist between persons sustaining to one another the following relations:

**Parent and Child.** Transactions between parent and child, even if the child may have just passed majority, will be carefully scrutinized by courts of equity, and if there is any evidence of pressure, or of influence, unduly exercised, the transaction will be set aside at the instance of the party thus influenced.

Taylor vs. Taylor, 8 How. 183.

Miller vs. Simonds, 72 Mo. 669.

White et al. vs. Ross, 43 N. E. R. 336.

Graham vs. Burch, 44 Minn. 33.

Hart vs. Hart et al., 42 Atl. R. 153.

Disch et al. vs. Timm et al., 77 N. W. R. 196.

Undue influence is often found to exist where the family relationship is other than that of parent and child, such as brother and sister, nephew and uncle, and even where one party stands *in loco parentis* to the other.

Kennedy's Heirs vs. Kennedy's Heirs, 2 Ala. 571.

Sears et al. vs. Shafer & A., 6 N. Y. 268.

Smith et al. vs. Smith, 134 N. Y. 62.

Undue influence will avoid a deed not only as to the grantee who exerts the influence unduly, but as to other innocent grantees in the same transaction, who did not exercise undue influence and who did not pay a valuable consideration.

Graham vs. Burch, 44 Minn. 33.

Whelan vs. Whelan, 3 Cow. 537.

**Guardian and Ward.** Contracts between guardian and ward during the continuance of that relation, and even immediately after its conclusion, will be scrutinized in equity with great care; and if the contract takes the form of a gift from the ward to the guardian it will rarely, if ever, be sustained.

Ashton vs. Thompson, 32 Minn. 25.

Cowee vs. Cornell et al., 75 N. Y. 91.

In this last case the court says: "Whenever, however, the relations between the contracting parties appear to be of such a character as to render it certain that they do not deal on terms of equality but that either on the one side from superior knowledge of the matter derived from a fiduciary relation, or from overmastering influence, or on the other from weakness, dependence, or trust justifiably reposed, unfair advantage in a transaction is rendered probable, there the burden is shifted, the transaction is presumed void, and it is incumbent upon the stronger party to show affirmatively that no deception was practiced, no undue influence was used, and that all was fair, open, voluntary and well understood. This doctrine is well settled. \* \* \* \* The law presumes in the case of guardian and ward, trustee and *cestui que trust*, attorney and client, and perhaps physician and patient, from the relation of the parties itself that their situation is unequal and of the character I have defined; and that relation appearing itself throws the burden upon the trustee, guardian, or attorney, of showing the fairness of his dealings."

**Attorney and Client.** Transactions, and especially contracts and donations, between attorney and client will be subjected to the most rigid judicial scrutiny, and the burden of proof lies upon the attorney to show that there was no undue influence, and this is true even if the relation of attorney and client has ceased, if the influence of the relationship still continues. Undue influence on the part of the attorney is presumed, and hence the contract is presumably voidable.

Roby vs. Colehour, 135 Ill. 300; 25 N. E. R. 777.

Cunningham vs. Jones, 37 Kan. 477; 15 Pac. 572.

Ross vs. Payson, 160 Ill. 349; 43 N. E. R. 399.

Beedle vs. Crane, 91 Mich. 429; 51 N. W. R. 1070.

Henry vs. Raiman, 25 Pa. St. 354.

**Trustee and Cestui Que Trust.** The relationship of trustee and beneficiary is also one of peculiar confidence, and any contract between these parties while the relationship continues, or immediately after its conclusion if the influence thereof continues, is as a general rule voidable as to the beneficiary.

Smith vs. Townshend et al., 27 Md. 368.

Richards vs. Pitts et al., 124 Mo. 602; 28 S. W. R. 88.

Cole vs. Stokes, 113 N. C. 270; 18 S. E. R. 321.

Spencer's and Newbold's Appeal, 80 Pa. St. 317.

Where one person holds simply a legal title as trustee for another he is called a dry trustee and the contracts between him and the beneficiary are subject to the ordinary rules of the buyer and seller. There is no presumption of undue influence.

Inlow vs. Christy et al., 187 Pa. St. 191; 40 Atl. 823.

**Executors and Administrators.** The same rule as that which exists between trustee and beneficiary applies to all other persons who sustain fiduciary relations, such as executors and administrators and many others.

Richardson's Executor vs. Green, 133 U. S. 30.

**Other Fiduciary Relations.** There are other fiduciary relations, differing somewhat from those hereinbefore mentioned, but from which relationships when they have once been established undue influence may be presumed by a court of equity.

**Husband and Wife.** The wife may make a contract with her husband which will be upheld in equity, but the courts al-

ways examine such transactions with great watchfulness and with jealous care, and if such contract is a sale the burden rests upon the stronger party to show that no advantage was taken.

Farmer's Executor vs. Farmer et al., 39 N. Eq. 211.

Disch et al. vs. Timm et al., 77 N. W. R. 196.

Darlington's Appeal, 86 Pa. St. 512.

Ilgenfritz vs. Ilgenfritz, 22 S. W. R. 786.

**Physician and Patient.** Contracts between a physician and his patient are also watched with jealous care and have often been set aside upon the ground of undue influence.

Woodbury vs. Woodbury, 141 Mass. 329; 5 N. E. R. 275.

Cadwallader et al. vs. West et al., 48 Mo. 483.

Crispell vs. Dubois, 4 Barb. 393.

**Spiritual Advisers.** The relation between spiritual advisers and those whom they advise often assumes the relationship of confidence; and transactions, as contracts, made with spiritual advisers, or gifts bestowed upon them, under these circumstances, will often raise the presumption of undue influence exerted over the weaker party.

Marx vs. McGlynn, 88 N. Y. 357.

Allcard vs. Skinner, L. R. 36 Ch. Div. 145.

Newman vs. Smith et al., 77 Cal. 22; 18 Pac. 791.

Finegan vs. Theisen et al., 92 Mich. 173; 52 N. W. R. 619.

**Spiritual Mediums.** The relation of confidence has been found sometimes to exist between spiritual mediums and persons brought under their influence.

Connor vs. Stanley, 72 Cal. 556; 14 Pac. 305.

**Illicit Relations.** So in other cases where one person acquires such an influence over another that he can control his wishes and induce him to do whatever he desires, contracts between them will be set aside as procured by undue influence,—as where women of loose character have got conveyances to themselves from their weak-minded victims.

Leightón vs. Orr, 44 Ia. 679.

Hanna vs. Wilcox, 53 Ia. 547.

**Other Relationships.** And so it may be said that this principle of undue influence as vitiating the assent applies to all

cases "where influence is acquired and abused; where confidence is reposed and betrayed," as where the strong-minded overpower the mentally weak, and where the unconscientious take advantage of another's financial embarrassments.

Fisher vs. Bishop et al., 108 N. Y. 25; 15 N. E. R. 331.

Todd vs. Grove etc., 33 Md. 188.

Hanson vs. Berthelson, 27 N. W. R. 423.

Williams vs. Collins et al., 25 N. W. R. 682.

Sands vs. Sands, 112 Ill. 225.

Rider vs. Miller, 86 N. Y. 507.

Moore vs. Moore, 56 Cal. 89.

Hough vs. Hunt, 2 Oh. 495.

Keeley vs. Caplice, 23 Kan. 337.

**Presumptions.** When the relationship of guardian and ward, parent and child, attorney and client, trustee and beneficiary, has been established and a benefit under a contract or gift moves from the latter persons to the former, the presumption of undue influence arises, and the burden of proving fairness and the absence of undue influence devolves upon the former parties. And it may be said as a general rule, that whenever the relationship of confidence and trust is established between two persons, the one in whom that trust and confidence is reposed will be called upon by the court to prove that the transaction was honest, fair and just.

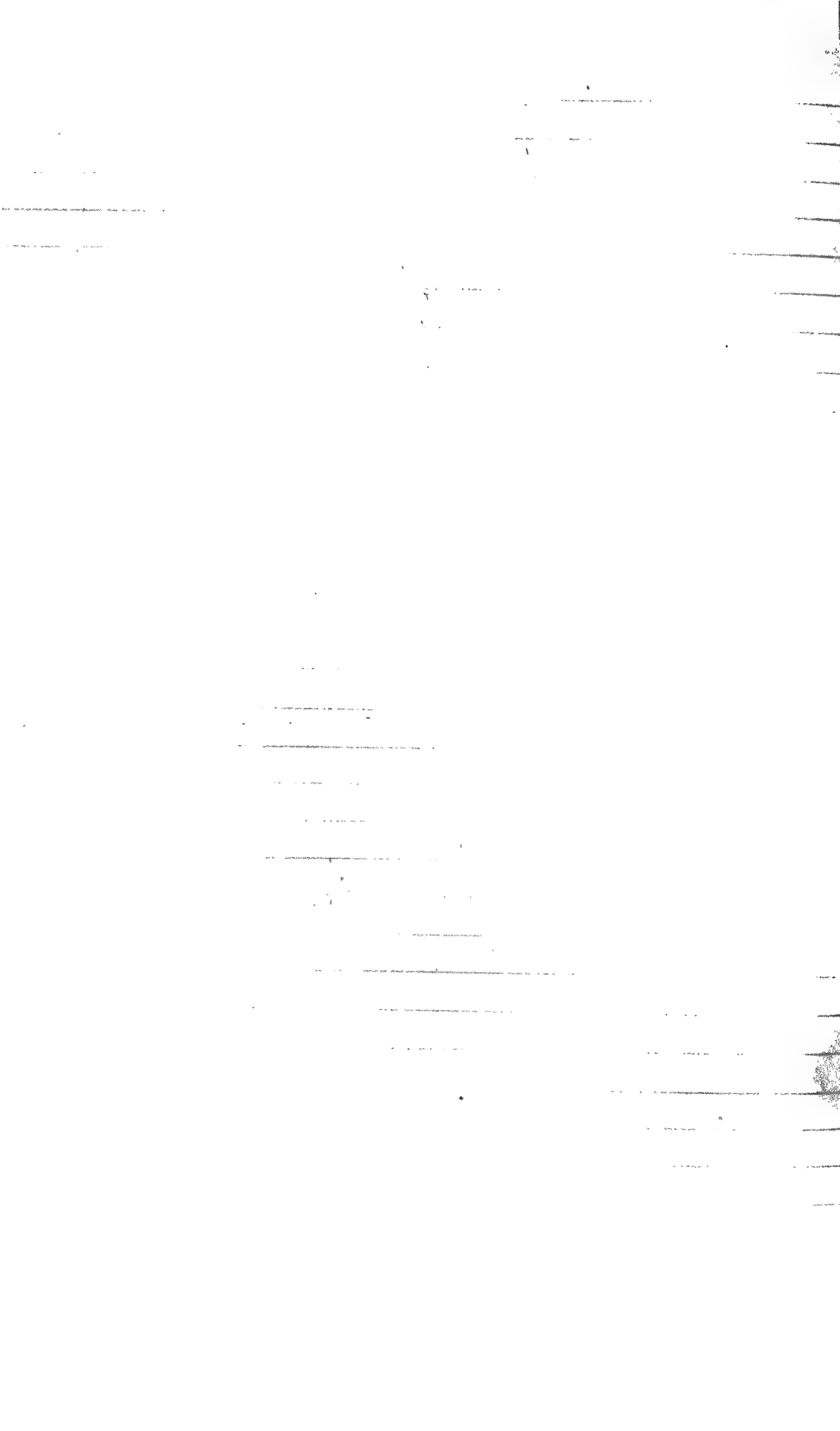
Clark vs. Clark, 34 Atl. 610-617.

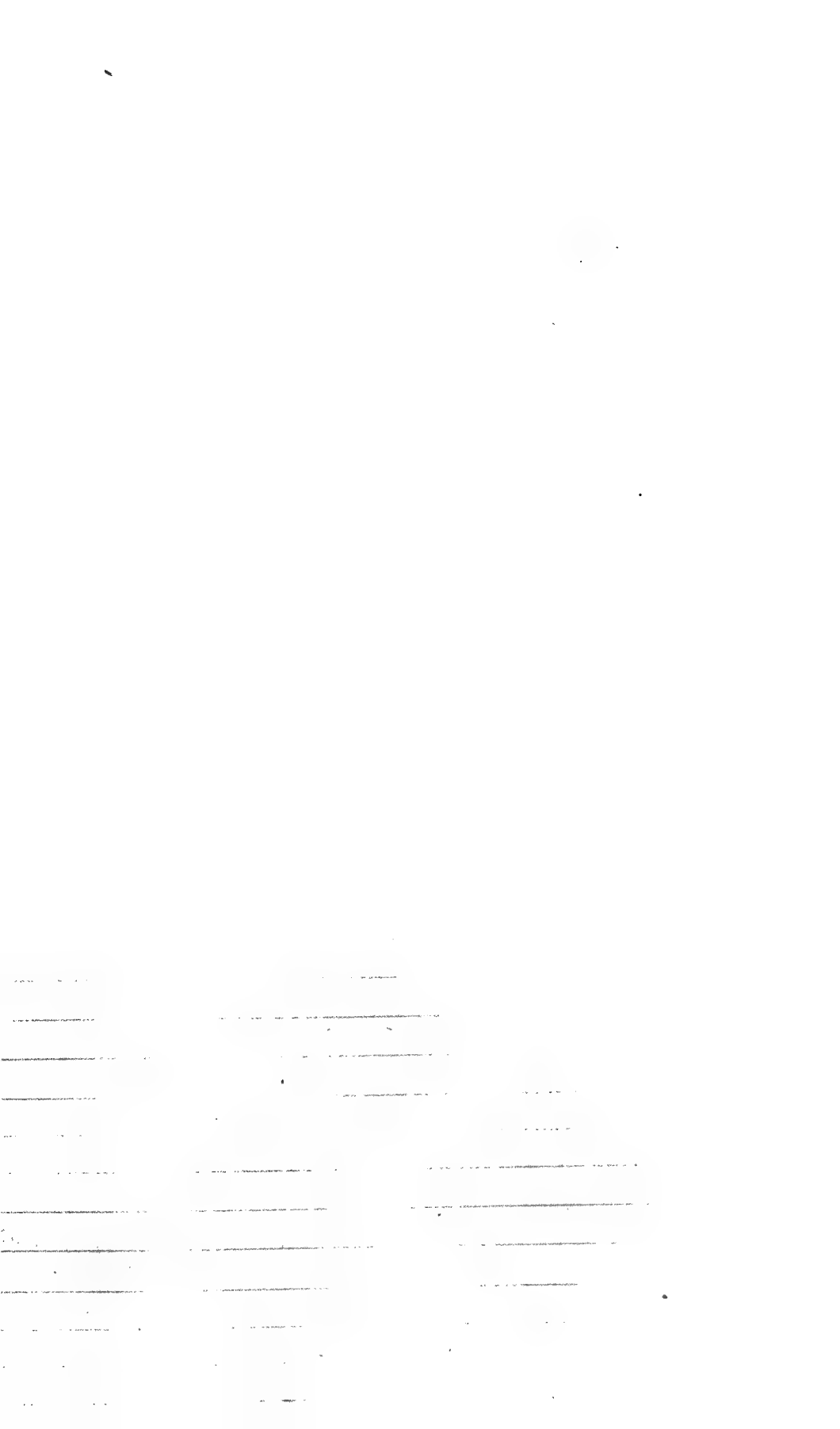
#### FURTHER DEDUCTIONS AND DICTA.













**MISREPRESENTATION AND FRAUD.**

Assent necessary to the existence of a valid contract must not be given under the vitiating influence of misrepresentation or fraud, and for the law governing this subject we will consult the following cases :

*Misrepresentation.*

- \*Mulvey vs. King, 39 Oh. St. 491.
- Brooks vs. Hamilton, 15 Minn. 26.
- Baughman vs. Gould, 45 Mich. 481.
- Wickham vs. Grant, 28 Kan. 370.
- Mitchell vs. McDougall, 62 Ill. 498.
- Tuck vs. Downing, 76 Ill. 71.
- Slaughter vs. Gerson, 13 Wall. 379.
- \*Burritt vs. Saratoga etc. Ins. Co., 5 Hill 189.
- N. Y. Bow. Ins. Co. vs. N. Y. Fire Ins. Co., 17 Wend. 359.
- McLanahan vs. Ins. Co., 1 Pet. 170-185.
- Baker vs. Humphrey, 101 U. S. 494.

*Fraud.*

- \*Murwin vs. Arbuckle, 81 Ill. 501.
- \*Humphrey vs. Merriam, 32 Minn. 197.
- \*Starr vs. Bennett, 5 Hill 303.
- Ins. Co. vs. Reed, 33 Oh. St. 283.
- Drake vs. Latham, 50 Ill. 270.
- Fish vs. Cleland, 33 Ill. 237.
- \*Mooney vs. Miller, 102 Mass. 217.
- Warren vs. Doolittle, 61 Ill. 171.
- Gordon vs. Parmelee, 2 Allen 212.
- Gordon vs. Butler, 105 U. S. 553.
- Geddes vs. Pennington, 5 Dow. 159.
- \*Croyle vs. Moses, 90 Pa. St. 250.
- Kenner vs. Harding, 85 Ill. 264.
- \*Laidlaw vs. Organ, 2 Wheat. 178.
- \*Harris vs. Tyson, 24 Pa. St. 347.
- Williams vs. Spurr, 24 Mich. 335.



ACTION

3 pages after a number

www.khanacademy.org

OpenStax.org

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

NON

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

**Deductions and Dicta from Cases Examined.**

From the foregoing cases and others cited and examined we deduce the following propositions.

**Misrepresentation.** Misrepresentation of a material fact, innocently made by one party to a contract, which is believed and reasonably acted upon by the other party to his injury, so far affects the assent given to an agreement as to make the contract voidable, so that the injured party is entitled to relief, either by a rescission of the contract, or by a recoupment in the suit brought to enforce it.

Misrepresentation differs from fraud in that it lacks the element of fraudulent intent, but in order to vitiate assent to an agreement the following facts must be made to appear:

(1) The misrepresentation must be of a material fact affecting the identity, value, or character of the subject-matter of the contract.

(2) It must have been reasonably relied upon by the other party.

(3) The other party must have entered into the contract by reason of it, and

(4) He must have sustained injury thereby.

The misrepresentation must be of such a "character as to destroy the assent necessary to the validity of a contract."

Brooks vs. Hamilton, 15 Minn. 26.

Slaughter's Adm. vs. Gerson, 13 Wall. 379.

The non-disclosure of a fact material to the contract by one whose duty it is to disclose it by reason of the fiduciary or confidential relation he sustains to the other party will vitiate the assent so that the contract will be voidable as to the party injured.

Burritt vs. Saratoga Ins. Co., 5 Hill 189.

**Fraud.** Fraud consists in inducing a person to act under the influence of some untrue statement or representation intentionally made for that purpose. Fraud renders the contract voidable *ab initio* both at law and in equity.

Jones vs. Emery, 40 N. H. 348.

**Elements of Fraud.** (1) There must be a false representation respecting a material fact.

(2) It must be made intentionally or negligently by the defrauding party for the purpose of inducing the other party to act.

(3) It must be reasonably relied and acted upon by the defrauded party.

(4) The defrauded party must have sustained damage by so acting.

Derry et al. vs. Peek, L. R. 14 App. Cases 337.

**Rules Respecting the Scierter.** (1) If one makes a statement knowing that it is false, this lays the foundation for fraud.

(2) If one makes an untrue representation as of his own knowledge, not knowing whether it is true or false, this too lays the foundation for fraud.

Bullitt vs. Farrar, 42 Minn. 8.

(3) Where one makes an untrue statement respecting a matter which is peculiarly within his own knowledge he will be held chargeable therefor, and such statement will lay the foundation for fraud.

Kiefer vs. Rogers, 19 Minn. 32.

(4) Where one makes an untrue representation, but the other party has an equal opportunity to ascertain its truth or falsity, the principle *caveat emptor* will apply, and fraud will not result from such a representation.

Mamlock vs. Fairbanks, 46 Wis. 415.

The assent necessary to a valid contract must be procured by honest means. If procured by fraud in any of its forms, the contract may be avoided by the party upon whom the fraud is practiced, or by his legal representatives.

Murwin vs. Arbuckle, 81 Ill. 501.

Humphrey vs. Merriam, 32 Minn. 197.

Misrepresentation as to a point of law is not a fraud unless accompanied with some confidential relationship between the parties.

Starr vs. Bennett, 5 Hill 303.

Misrepresentation as to a matter of opinion does not constitute fraud such as will vitiate assent.

Mooney vs. Miller, 102 Mass. 217.

Misrepresentation as to an immaterial fact in no way affects the assent and consequently will not amount to fraud.

Geddes vs. Pennington, 5 Dow. 159.

Artful devices by which one party conceals a material fact respecting the subject-matter, or by which he prevents the other party from discovering such fact, are fraudulent, and hence vitiate the assent to the contract making it voidable *ab initio*.

Croyle vs. Moses, 90 Pa. St. 250.

The non-disclosure of extrinsic facts which may affect the price of a commodity, is not such a fraud on the part of him who knows but does not reveal them as to render the contract voidable as to the other party.

Laidlow vs. Organ, 2 Wheat. 178.

Harris vs. Tyson, 24 Pa. St. 347.

Williams vs. Spurr, 24 Mich. 335.

**Latent Defects.** In the sale of property the law presumes that the vendee reposes confidence in the vendor to disclose all defects in the subject-matter not within reach of ordinary observation, and therefore the law imposes the duty upon the vendor to disclose such defects. Ordinarily the vendor reposes no such confidence in the vendee, and hence the vendee is not bound to disclose any facts respecting the subject-matter which he may possess, but of which the vendor is ignorant. But such vendee must not in any way mislead or deceive the vendor respecting such undisclosed facts.

Bench vs. Sheldon, 14 Barb. 66.

Harris vs. Tyson, 24 Pa. St. 347.

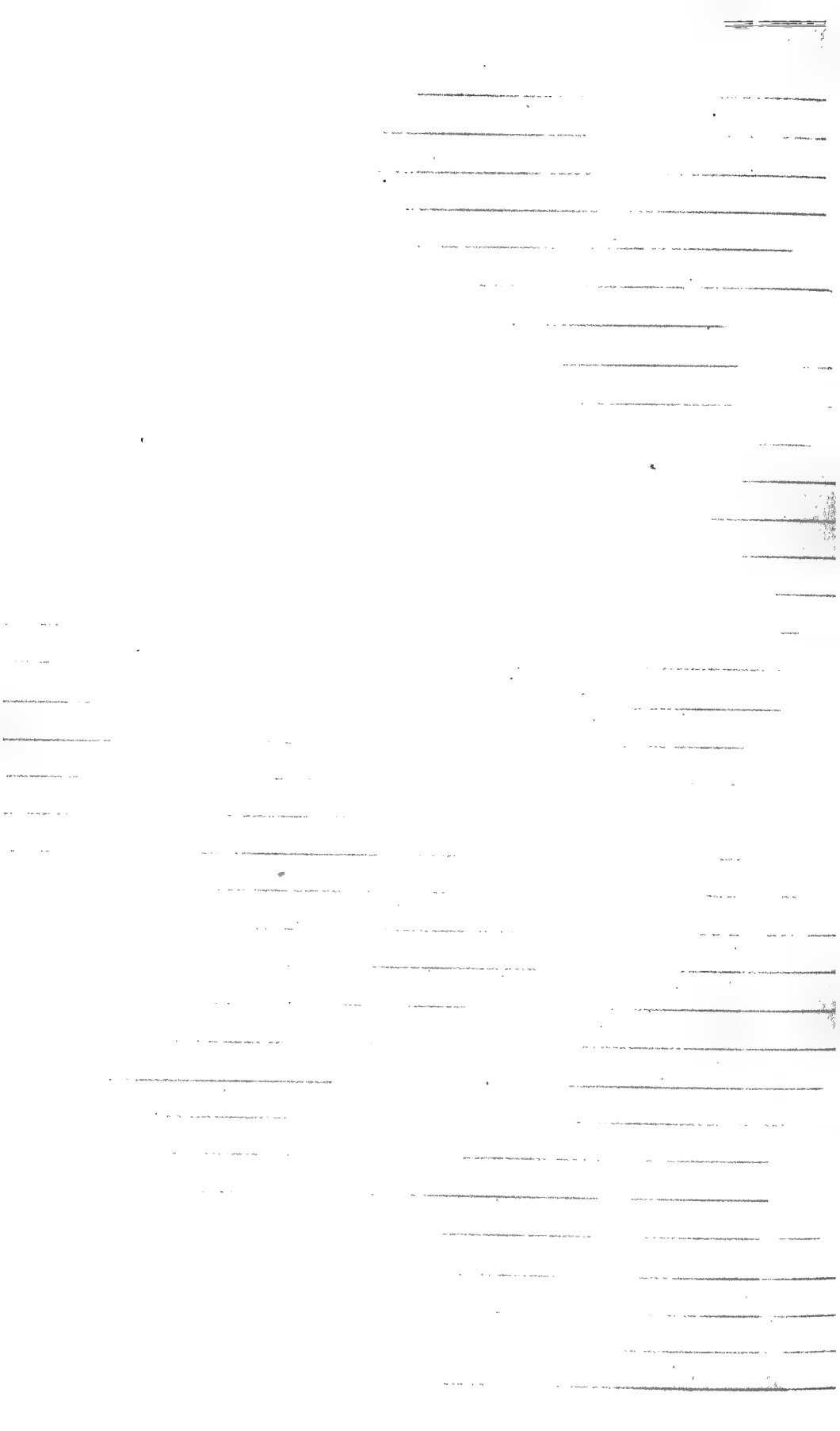
Williams vs. Spurr, 24 Mich. 335.

There may be circumstances where silence even on the part of the vendor respecting latent defects amounts to concealment, and will lay the foundation for fraud.

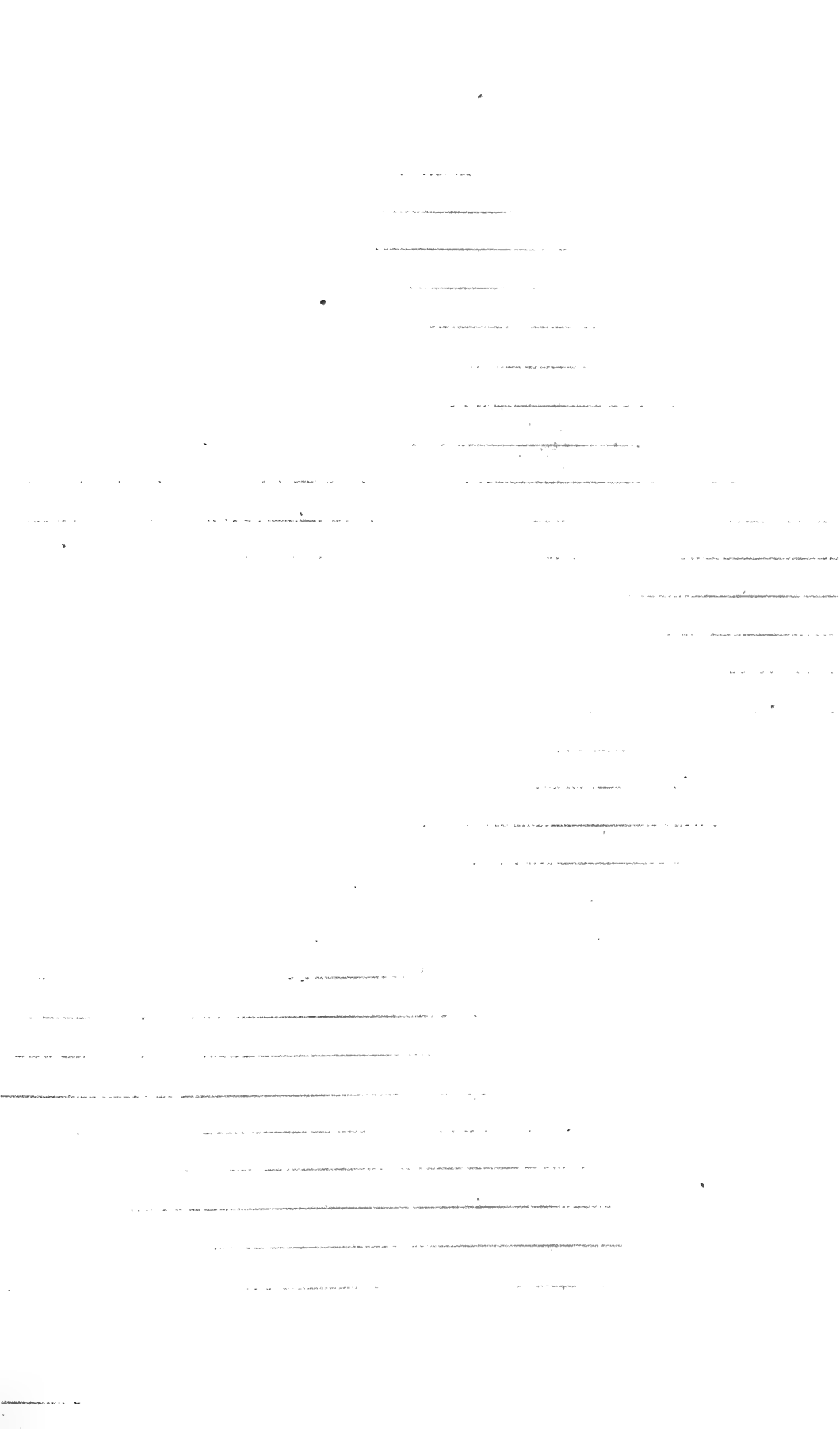
Grigsby vs. Stapleton, 92 Mo. 423; 7 S. W. R. 421.

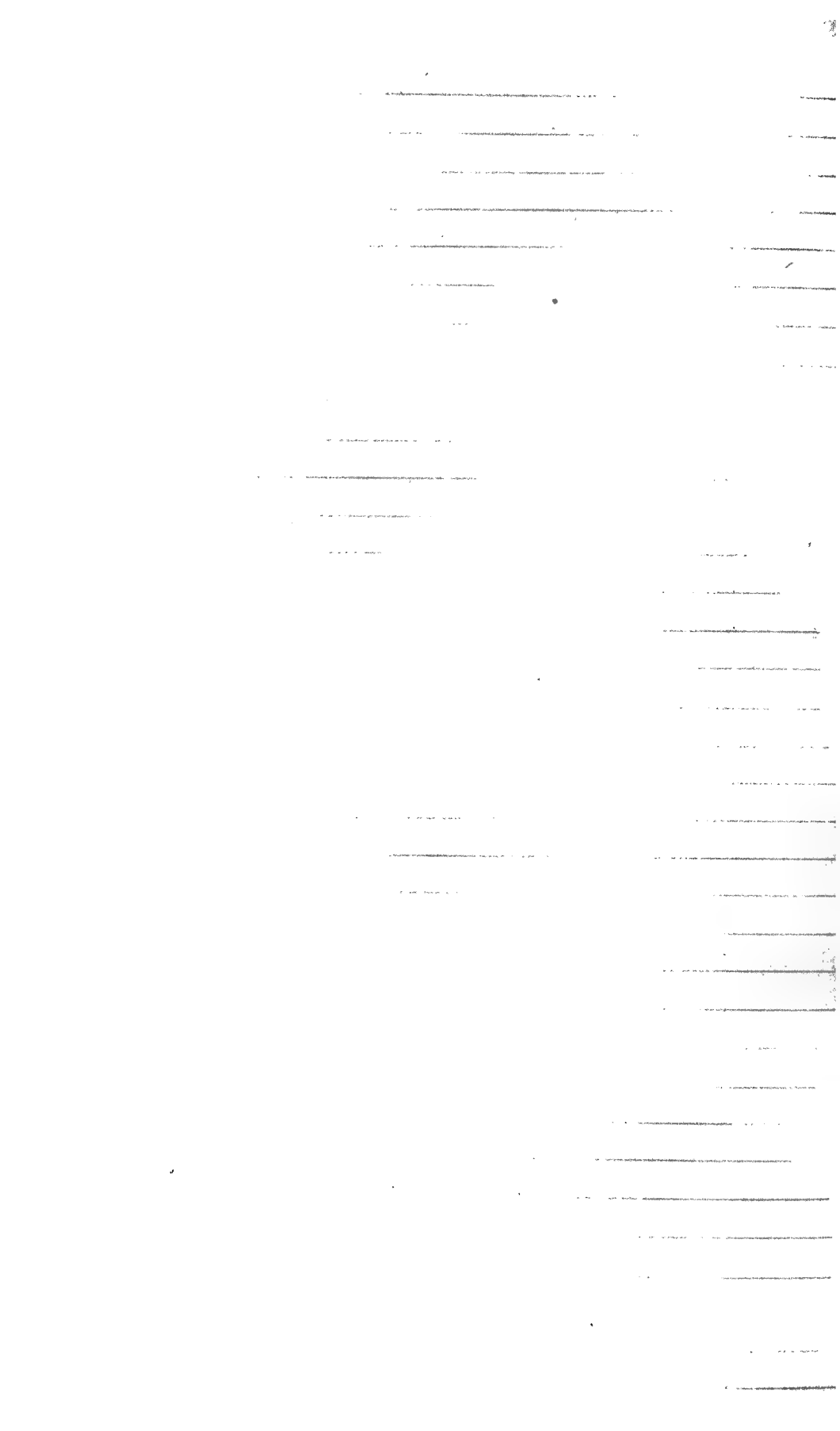
## FURTHER DEDUCTIONS AND DICTA.











**CONCURRENT ASSENT.**

Thus far we have seen that, in order to constitute a contract, there must be, first, two or more parties; second, an offer by one and an acceptance by the other, amounting to a legal agreement; third, that the agreement must be clearly expressed by language, oral, written, or symbolical; fourth, that the assent of the parties must be both mutual and reciprocal; and now in conclusion we must add that the offer and acceptance must be *concurrent*.

\*Mactier vs. Frith, 6 Wend. 103.



## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

## ACTION

## ISSUE

## LAW

## FACTS

## DECISION



## CONSTRUCTIVE OR QUASI CONTRACTS.

In both express and implied contracts the assent of the minds, or the *aggregatio mentium*, is found to exist as a fact; but there is another class of quasi-contracts, so called, where there is no assent of the minds whatever. Such are the contracts made with insane persons, who have no natural capacity to contract, and the contracts whereby the husband is bound to pay for his wife's necessities, and in all other cases where the law presumes an assent, or promise, by a party, when as a matter of fact there is no such assent or promise.

Justice often requires the adjustment of the relations of persons who lack natural capacity to contract, or upon whom the law imposes positive obligations, even against their will, and as such adjustment is allowed in an action *ex contractu* these relations have often been called contractual relations. Lacking the element of assent, the transactions whereby these relations are established are not contracts at all, but are properly classed by themselves as *quasi-contracts*. For the law upon this subject we will examine the following authorities:

Plate vs. Durst, 32 L. R. A. 404-7.

\*Sceva vs. True, 53 N. H. 630.

State vs. Mayor of New Orleans, 109 U. S. 285.

\*Hudson vs. Gilliland, 25 Ark. 100.

Steamship Co. vs. Joliffe, 2 Wall. 450.

Cunningham vs. Reardon, 98 Mass. 538.

Eiler vs. Crull, 99 Ind. 375.

Pierpont vs. Willson, 49 Conn. 450.

Watkins vs. De Armond, 89 Ind. 553.

Ferren vs. Moore, 59 N. H. 106.

Heffron vs. Brown, 54 Ill. App. 377.

Merchant's Bank vs. National Bank, 139 Mass. 513.

Cobb vs. Cole, 44 Minn. 278.

Rheel vs. Hicks, 25 N. Y. 289.

\*Hertzog vs. Hertzog, 29 Pa. St. 465.



## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

•

**ISSUE**

**LAW**

**FACTS**

**DECISION**

### Deductions and Dicta from Cases Examined.

From the foregoing cases and others cited and examined, we deduce the following propositions.

Courts often sustain an action *ex contractu*, where, as a matter of fact, no contract was ever made by the parties, but where the law, for certain reasons, conclusively presumes a promise to have been made by the party charged with an obligation.

**Judgment.** In case a tort is committed, the plaintiff may procure judgment against the defendant for damages, against his protest and opposition; but if the judgment is not paid the plaintiff may sue thereupon in an action *ex contractu*, and as the law implies a promise on the part of the defendant to pay the judgment, this action *ex contractu* will be maintained.

State vs. Mayor of New Orleans, 109 U. S. 285.

**Waiver of Tort.** Again if A wrongfully obtains property belonging to B, and sells it as his own, receiving the money for it, B may waive the tort and bring an action *ex contractu* for the money; and the law will imply a promise on A's part to pay it to B.

Hudson vs. Gilliland, 25 Ark. 100.

Terry et al. vs. Munger, 121 N. Y. 161.

But see,

Jones vs. Hoar, 5 Pick. 285.

**Statutory Liability.** So where a statute imposes a duty upon one going in and out of a harbor to employ a licensed pilot, and the shipmaster refuses the services of such pilot when tendered, the court will hold such shipmaster liable for one-half the regular pilot fees, as the law provides, in an action *ex contractu*.

Steamship Co. vs. Joliffe, 2 Wall. 450.

In this case the court said: "The transaction in this case between the shipmaster and the pilot cannot be termed a contract, but it is a transaction to which the law attaches similar consequences. It is a quasi-contract. The absence of assent

on the part of the master of the vessel does not change the case."

**Common Law Liability.** As the common law imposes upon the husband the duty to provide necessities for his wife, so it implies a promise on his part to pay for those necessities when they are properly furnished by another.

Cunningham vs. Reardon, 98 Mass. 538.

Eiler vs. Crull, 99 Ind. 375.

The same is true though the husband give notice, either general or special, that he will not be responsible for his wife's supplies.

Pierpont vs. Willson, 49 Conn. 450.

Watkins vs. De Armond, 89 Ind. 553.

Where the husband gives his express written consent that his wife may commit adultery with another man, in consideration of her relieving him from all liability for her support, he will nevertheless be held liable for her necessities in an action *ex contractu*.

Ferren vs. Moore, 59 N. H. 106.

**Estoppel.** Again, where one furnishes goods or services to another, expecting compensation for them, and the other party knows that compensation is expected, but he fully intends not to pay for them, so that there is no actual assent on his part to the offer contained in the services rendered; yet if he does not object to receiving them, or if he does object but finally accepts the services or goods, he will be held to pay for them in an action *ex contractu*.

Plate vs. Durst, 32 L. R. A. 407.

Heffron vs. Brown, 54 Ill. App. 377.

In this last case the court says: "The question whether the services rendered were intended to be gratuitous is not a question of law, but of fact; and the parties need not have had the same intention to entitle a person to recover. If a party expects to be paid, and if the other party knows or believes such to be the fact, and by his language or conduct encourages the party to entertain such expectation, then he must pay even if he did not intend to."

**Money Paid Under Mistake of Fact.** Where money is paid under a mistake of fact the plaintiff may recover the same in an action *ex contractu*.

Merchant's Bank vs. National Bank, 139 Mass. 513.

Cobb vs. Cole, 44 Minn. 278.

Rheel vs. Hicks, 25 N. Y. 289.

In this last case it was held that money paid by a person charged as the father of an unborn bastard, to a superintendent of the poor, may be recovered upon its appearing that the supposed mother was not in fact pregnant.

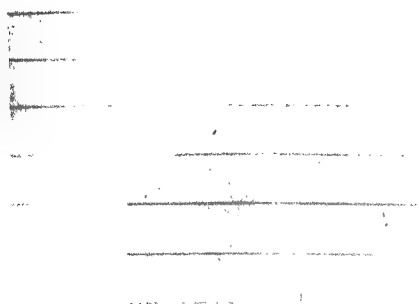
FURTHER DEDUCTIONS AND DICTA.













1. The first part of the document is a list of names and addresses. The names are written in a cursive script, and the addresses are written in a more formal, printed style. The list is organized into columns, with names in the first column and addresses in the second column. The names are: John Smith, James Brown, and William Jones. The addresses are: 123 Main Street, 456 Elm Street, and 789 Oak Street.

2. The second part of the document is a list of names and addresses. The names are written in a cursive script, and the addresses are written in a more formal, printed style. The list is organized into columns, with names in the first column and addresses in the second column. The names are: John Smith, James Brown, and William Jones. The addresses are: 123 Main Street, 456 Elm Street, and 789 Oak Street.

3. The third part of the document is a list of names and addresses. The names are written in a cursive script, and the addresses are written in a more formal, printed style. The list is organized into columns, with names in the first column and addresses in the second column. The names are: John Smith, James Brown, and William Jones. The addresses are: 123 Main Street, 456 Elm Street, and 789 Oak Street.

4. The fourth part of the document is a list of names and addresses. The names are written in a cursive script, and the addresses are written in a more formal, printed style. The list is organized into columns, with names in the first column and addresses in the second column. The names are: John Smith, James Brown, and William Jones. The addresses are: 123 Main Street, 456 Elm Street, and 789 Oak Street.

5. The fifth part of the document is a list of names and addresses. The names are written in a cursive script, and the addresses are written in a more formal, printed style. The list is organized into columns, with names in the first column and addresses in the second column. The names are: John Smith, James Brown, and William Jones. The addresses are: 123 Main Street, 456 Elm Street, and 789 Oak Street.

## PART III.

## CONSIDERATION.

Consideration is that in exchange for which a promise is given; and it must exist either actually or by implication in every contract.

The principles governing this essential element are numerous and most important, and in order that we may fully understand the law bearing upon this subject we will consult the following authorities:

\*Thomas vs. Thomas, 2 Q. B. 851.

\*McMillan vs. Ames, 33 Minn. 257.

Van Valkenburgh vs. Smith, 60 Me. 97.

Dorr vs. Munsell, 13 John. 430.

Paige vs. Trufant, 2 Mass. 159.

*Good Consideration.*

\*Stovall vs. Barnett's Ex'rs, 4 Littell 208.

McIntire vs. Hughes, 4 Bibb. (Ky.) 186.

Hanson vs. Buckner's Ex., 4 Dana (Ky.) 251.

Bell vs. Scammon, 15 N. H. 381.

Stafford vs. Stafford, 41 Tex. 111.

Jackson vs. Sebring, 16 John. 515.

\*Fink vs. Cox, 18 John. 145.

Smith vs. Kittridge, 21 Vt. 238.

Philips vs. Frye, 14 Allen 36.

Whitaker vs. Whitaker, 52 N. Y. 368.

*Valuable Consideration.*

\*Washband vs. Washband, 27 Conn. 424.

Keys vs. Test, 33 Ill. 317.

De Lancey vs. Stearns et al., 66 N. Y. 157.

\*Burnet vs. Biscò, 4 John. 235.

Conover vs. Stillwell, 34 N. J. L. 54.

Ames vs. Taylor, 49 Me. 381.

Dorwin vs. Smith, 35 Vt. 69.

Newhall vs. Paige, 10 Gray 366.

*Insufficiency.*

- \*Worth vs. Case, 42 N. Y. 362.
- Hubbard vs. Coolidge, 1 Met. 84-93.
- Earl vs. Peck, 64 N. Y. 596.
- McArtee vs. Engart, 13 Ill. 242-8.
- Eyre vs. Potter, 15 How. 42-59.

*Marriage.*

- \*Peck vs. Vandemark, 99 N. Y. 29.
- Wright vs. Wright, 54 N. Y. 437-440.
- Rockafellow vs. Newcomb, 57 Ill. 186-191.
- Frank's Appeal, 59 Pa. St. 190.
- Smith vs. Allen, 5 Allen 454.

*Moral Obligation.*

- \*Mills vs. Wyman, 3 Pick. 207.
- Cook vs. Bradley, 7 Conn. 57.
- \*Keener vs. Crull & Wife, 19 Ill. 189.
- Higgins vs. Dale, 28 Minn. 126.
- Reed vs. Batchelder, 1 Met. 559.
- Little vs. Blunt, 9 Pick. 488.
- Young vs. Perkins, 29 Minn. 173.
- Brisbin vs. Farmer, 16 Minn. 215.

*Promise.*

- \*Funk vs. Hough et al., 29 Ill. 145.
- Porter vs. Rose, 12 John. 209.
- Coleman vs. Eyre, 45 N. Y. 38.
- Philpot vs. Gruninger, 14 Wall. 570.

*Executed.*

- \*Dearborn vs. Bowman, 3 Met. 155.
- Bartholomew vs. Jackson, 20 John. 28.
- Allen vs. Bryson, 67 Ia. 591.

*Legal Obligation.*

- \*Jennings vs. Chase, 10 Allen 526.
- Harriman vs. Harriman, 12 Gray 341.

*Impossibility.*

- \*Beebe vs. Johnson, 19 Wend. 500.
- Stees vs. Leonard, 20 Minn. 494.
- Clifford vs. Watts, L. R. 5 C. P. 577-588.
- The Harriman, 9 Wall. 161-172.

*Voluntary Payments.*

- \*Gleason vs. Dyke, 22 Pick. 390.
- Doty vs. Wilson, 14 John. 378-82.

*Abstinence.*

- \*Talbot vs. Stemmons' Ex., 89 Ky. 222.
- Hamer vs. Sidway, 124 N. Y. 538; 27 N. E. R. 256.

*Illegal Consideration.*

- \*Hanks vs. Naglee, 54 Cal. 51.
- \*Paddock vs. Robinson, 63 Ill. 99.
- \*Eaton vs. Kegan, 114 Mass. 433.
- Bisbee vs. McAllen, 39 Minn. 143.
- Johnson vs. Clark, 51 N. Y. S. 238.
- \*Dillon & Palmer vs. Allen, 46 Ia. 299.
- Ingersoll vs. Randall, 14 Minn. 400.

*Unlicensed Attorney.*

- Ames vs. Gilman, 10 Metc. 239.
- Harland vs. Lilienthal, 53 N. Y. 438.

*Unlicensed Physician.*

- Bibber vs. Simpson, 59 Me. 181.
- Richardson vs. Dorman's Ex., 28 Ala. 679.
- Coyle vs. Campbell, 10 Ga. 570.
- Ruckman vs. Bergholz, 37 N. J. L. 437.

*Usury.*

- \*Ormund vs. Hobart, 36 Minn. 306.
- Jordan vs. Humphrey, 31 Minn. 495.
- Early vs. Mahon, 19 John. 147.
- Hammond vs. Hopping, 13 Wend. 505.

*Sunday Contracts.*

- \*Block vs. McMurry, 56 Miss. 217.
- Hanchett vs. Jordan, 43 Minn. 149.
- First Nat. Bk. vs. Kingsley, 84 Me. 111; 24 Atl. 794.
- Adams vs. Gay, 19 Vt. 358.
- Plaisted vs. Palmer, 63 Me. 576.
- Day vs. McAllister, 15 Gray 433.
- Russell vs. Murdock, 44 N. W. R. 237.
- Reynolds vs. Stevenson, 4 Ind. 619.
- Durant vs. Rhener, 26 Minn. 362.

*Sunday Subscription.*

- Bryan et al. vs. Watson, 127 Ind. 42; 26 N. E. R. 666.

*Third Parties.*

- Varney vs. French, 19 N. H. 233.
- Foster vs. Wooten, 7 So. R. 501.
- Jameson vs. Carpenter, 36 Atl. 554.

*Lotteries.*

- \*Seidenbender vs. Charles' Adm., 4 S. & R. 151.
- State vs. Moren, 48 Minn. 555.

*Wagers.*

- \*Johnson vs. Fall, 6 Cal. 359.
- Beadles vs. Bless, 27 Ill. 320.
- Mulford vs. Bowen, 9 N. J. L. 315.
- Smith vs. Smith, 21 Ill. 244.

*American Rule.*

- \*Love vs. Harvey, 114 Mass. 80.
- \*Wilkinson vs. Tousley, 16 Minn. 299.
- Cooper vs. Brewster, 1 Minn. 94.
- Bates vs. Clifford, 22 Minn. 52.
- Bernhard vs. Taylor, 23 Ore. 416; 31 Pac. 968.
- Gilmore vs. Woodcock, 69 Me. 118.

*Trespass.*

- \*Hatch vs. Mann, 15 Wend. 45.

*Fraud.*

- \*Sternberg vs. Bowman, 103 Mass. 325.
- Huckins vs. Hunt, 138 Mass. 366.

*Public Policy.*

- \*Sterling vs. Sinnickson, 5 N. J. L. 871.
- \*Johnson's Adm. vs. Hunt, 81 Ky. 321.
- Crawford vs. Russell, 62 Barb. 92.

*Restraint of Trade.*

- \*Bishop vs. Palmer, 146 Mass. 469.
- Alger vs. Thacher, 19 Pick. 51.
- Craft vs. McConoughy, 79 Ill. 346.
- \*Oregon Stm. Nav. Co. vs. Winsor, 20 Wall. 64.
- Gilman vs. Dwight, 13 Gray 356.
- Chappel vs. Brockway, 21 Wend. 157.

*Futures.*

- \*Mohr vs. Miesen, 47 Minn. 228.
- Irwin vs. Williar, 110 U. S. 499.
- Cobb vs. Prell, 22 Am. L. Reg. 609 note.

*Public Service.*

- \*Nichols vs. Mudgett, 32 Vt. 546.
- Trist vs. Child, 21 Wall. 441.
- Houlton vs. Nichol, 67 N. W. R. 715.

*Public Justice.*

\*Friend vs. Miller, 52 Kan. 139; 34 Pac. 397.

Janis vs. Roentgen, 52 Mo. App. 114.

Wegner vs. Biering, 22 S. W. R. 258.

Small vs. Williams, 13 S. E. R. 589.

*Morals.*

\*Brown vs. Tuttle, 80 Me. 162; 13 Atl. 583.

*Failure.*

\*Rice vs. Goddard, 14 Pick. 293.

Thompson vs. Wheeler, etc., Mfg. Co., 29 Kan. 340.

*Partial Failure.*

\*Stevens vs. Johnson, 28 Minn. 172.

*Want of.*

\*Pearson vs. Pearson, 7 John. 25.

*Unlawful.*

\*McBratney vs. Chandler et al., 22 Kan. 482.

\*Goodwin vs. Clark et al., 65 Me. 280.





ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

.

ISSUE

LAW

.

FACTS

DECISION

,

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

ACTION

ISSUE

LAW

FACTS

DECISION



### Deductions and Dicta from Cases Examined.

From the foregoing cases and others cited and examined we deduce the following propositions.

Every promise must rest upon a consideration, either good or valuable, actual or implied, in order to be maintained, or enforced, at law as a valid contract.

**Good Consideration.** A good consideration in the language of Blackstone "is such as that of blood, or natural love and affection, as when one grants an estate to a near relation, being founded on motives of generosity, prudence and natural duty." It is not, therefore, a specific thing of value, given in exchange for a promise, as is the case with a valuable consideration; but, in a conveyance of land, the blood relationship within certain limits between the grantor and grantee has been held by the courts as equivalent to a valuable consideration, and hence sufficient to support that particular conveyance known as a "covenant to stand seized." This seems to be the only purpose for which a *good* consideration is effectual, and not only is it effectual for this purpose, but a "covenant to stand seized" can only be supported by the relationship of blood or of marriage, as the following cases will illustrate.

(a) An example of a "covenant to stand seized" is found in the case of *Smith vs. Risley and others*, 3 Croke's Rep. 529. There one Paul Risley, who was seized in fee of certain lands, covenanted with Thomas Risley and three other persons not related by blood to the covenantor, that, in consideration of "affection which he did bear to his wife and children" he stood seized of his said lands, and would so stand seized in the future, to the use of himself, Paul Risley, for the term of his life, and after his death to the use of his wife, and after her death to the use of the said covenantors and their heirs, upon condition that they execute certain trusts specified. The court held that the covenant between Paul Risley and his brother Thomas, was supported by a sufficient consideration, though their relationship was not mentioned in the deed; but that no use could arise to the other three covenantees.

(b) In the case of *Rollins vs. Riley*, 44 N. H. 9, appears a "covenant to stand seized;" where the consideration of love and affection was held sufficient to sustain it.

A father and mother covenanted to stand seized of their homestead to the use of their son in consideration of love and affection, *on condition* that he would maintain them during their lives. He sold his interest in the land without the consent of the covenantors and his grantee breaks the close and the plaintiff, one of the covenantors, sues in trespass and recovers a verdict.

While the consideration was sufficient the grantee could not assign the personal covenant in the deed to maintain his parents.

(c) In *Jackson vs. Sebring*, 16 John. 515, one Hunt and wife bargained and sold land to Davidson "in consideration of the premises and for divers other causes and considerations," in trust, however, for themselves during their lives, and in trust for certain other persons after their death.

Davidson was in no way related by blood or marriage to the grantors nor to the beneficiaries.

The only heirs at law of Mrs. Hunt, after the death of the grantors, bring this action of ejectment against the defendants, who were in possession under the deed to Davidson.

The court held, first, that this deed could not stand, as a deed of bargain and sale, as it lacked a *valuable* consideration; second, that it could not be sustained as a covenant to stand seized, because it lacked the consideration of blood or of marriage; and hence the heirs at law of Hunt and wife were seized of the fee, and could maintain the action.

(d) In the case of *Gale vs. Coburn*, 18 Pick. 397, the grantor had conveyed land to his son-in-law, reserving "the right to use, occupy and enjoy the same during his life," free of all rent.

The wife of the son-in-law died leaving two children, and one of the heirs of the grantor, after his death, brings action to recover these lands, on the ground of insufficiency of the deed referred to, in that it endeavored to create an estate to take effect *in futuro*.

The court held, first, that the deed could not be sustained as a deed of bargain and sale; second, that as the relationship of grandfather and grandchildren existed between the grantor and the heirs of the grantee, the deed could be sustained as a "covenant to stand seized to uses," though love and affection was not stated in the deed as a consideration.

(e) In the case of *Stovall vs. Barnett's Exr.*, 4 Littell 208, the grantor conveyed two slaves to his granddaughter "in consideration of good will and affection," and the granddaughter not receiving the property after the grantor's death brings action of covenant against his executor. Demurrer was interposed and sustained by the court below; but the supreme court held that the plaintiff could recover, as the consideration was sufficient.

As to the degree of relationship between covenantor and covenantee, which will constitute a good consideration sufficient to sustain such a conveyance, Mr. Spence in his *Equity Jurisprudence* says: "If a man covenanted to stand seized to the use of his wife, or his son, or brother (and their wives were within the rule), or of his kindred within the degree of nephew or cousin, that was sufficient to raise an use to them respectively."

Spence *Eq. Juris.*, Vol. 1, § 450.

But the American decisions upon this point are not entirely harmonious. The relation between parent and child, grandparent and grandchild, brother and brother, are unquestionably sufficient; but whether a conveyance from a father-in-law, or mother-in-law, to his, or her, son-in-law, in consideration of love and affection, there is a diversity of opinion.

*Bell vs. Scammon*, 15 N. H. 382.

*Doe vs. Hines*, 1 Busbee 343.

Contra,

*Corwin et al. vs. Corwin*, 6 N. Y. 342.

*Jackson vs. Cadwell*, 1 Cowen 622.

In Massachusetts it has been held that a good consideration is not absolutely essential to support a covenant to stand seized, but that a valuable consideration will be sufficient; but this is contrary to the general current of American authorities at the present time.

*Trafton vs. Hawes*, 102 Mass. 533.

Closely connected with the consideration of blood was the fact that a covenant to stand seized would also be supported by the relationship of marriage. The covenantor could bind himself in consideration of the marriage relation to stand

seized to the use of his wife. Hence the doctrine was established "that a covenant to stand seized to uses must be supported by a consideration of blood or marriage."

Thompson et al. vs. Thompson, 17 Oh. St. 650.

In some modern conveyances between husband and wife the consideration of love and affection is held sufficient.

Tillaux vs. Tillaux, 47 Pac. 691.

Brown vs. Brown et al., 22 S. E. R. 412.

Edwards et al. vs. Thomas, 32 Atl. R. 580.

**Third Parties.** Conveyances supported by a good consideration merely are regarded as voluntary conveyances, and will be set aside by courts of equity wherever they break in upon the legal rights of creditors, on the ground that no man should prefer the claims of affection to those of justice.

Jackson vs. Seward, 5 Cowen 67.

Wickes vs. Clarke et al., 8 Paige 161.

Doe vs. Hurd et al., 7 Blackford 509.

Jackson vs. Garnsey, 16 John. 189.

Gale vs. Gould & Hammond, 40 Mich. 515.

Snyder vs. Free et al., 21 S. W. R. 847.

Read et al. vs. Mosby et al., 11 S. W. R. 940.

Voluntary conveyances are good as against the grantor, and any subsequent grantee, mortgagee or subsequent creditor of the grantor.

Gale vs. Gould & Hammond, 40 Mich. 515.

(g) A "good consideration" being confined wholly to *executed* contracts under seal for the transfer of realty, it was never sufficient to sustain a simple, executory contract, even the executory covenants contained in a conveyance.

Matter of Wilbur vs. Warren, 104 N. Y. 192; 10 N. E. R. 263.

Whittaker et al. vs. Whittaker, 52 N. Y. 368.

Smith vs. Kittridge, 21 Vt. 238.

Hadley vs. Reed, 12 N. Y. S. 163.

**Valuable Consideration.** A valuable consideration in the language of Blackstone "is such as money, marriage, or the like, which the law esteems an equivalent given for the grant, and is therefore founded in motives of justice."

The surrender of personal rights, such as abstaining from the use of tobacco, intoxicating liquors, and the playing of billiards, the assignment of property real or personal, including choses in action, the performance of labor, the rendering of professional services of all kinds, postponement of civil actions, dismissal of causes, extension of time of payment on demands that are due, and countless other acts which are a benefit to the promisor or which constitute a disadvantage or injury to the promisee, have been held a sufficient consideration to sustain an agreement, quite as effectually as money or marriage.

Talbott vs. Stemmons' Ex., 89 Ky. 222.

Washband vs. Washband, 27 Conn. 424.

Worth vs. Case, 42 N. Y. 362.

Peck vs. Vandemark, 99 N. Y. 29.

Funk vs. Hough et al., 29 Ill. 145.

**The Seal.** A seal imports a consideration. The courts presume from its presence upon an instrument containing a promise, that there was a sufficient consideration for the promise.

The act of affixing a seal to an instrument implies thought and reflection, and the courts have uniformly refused to permit parties, who have performed the solemn act of placing a seal upon their contracts, to afterwards show that there was no consideration for their agreement.

At common law the seal was an impression upon wax, or paper, or some other tenacious substance, capable of being impressed.

4 Kent's Com. 452.

2 Blk. Com. 305.

Tasker & Al. vs. Bartlett & Al., 5 Cush. 359.

Pease vs. Lawson et al., 33 Mo. 35.

In many states of the Union a scroll or device used as a seal upon any deed conveyance or other instrument has been given by statute the effect of a seal attached thereto and impressed thereon; and in some states the use of *private* seals in written contracts has been abolished altogether.

Gen. Stat. Minn. '94, §4190.

Gen. Laws Minn. '99, c. 86.

When, at common law, a seal is affixed to a written agreement, it implies, as has been stated, a consideration, and the instrument thus sealed is called a deed or specialty.

State vs. Thompson et al., 49 Mo. 188.

But to make a deed a binding contract upon the parties, it must not only be signed, and sealed, but it must also be delivered. A deed is an instrument, containing an agreement, signed when so required by law, sealed, and delivered. However perfect the contract may be in other respects, it takes effect and becomes binding upon the parties thereto only by delivery.

Cook vs. Brown, 34 N. H. 460.

Thompson vs. Easton, 31 Minn. 99.

Fay, etc. vs. Richardson, 7 Pick. 91.

The delivery may be made by the one executing the deed, by his handing it to the other party, or to a stranger for his benefit, or by such words as indicate the intention of the person executing the instrument that it shall become binding though retained in his possession, or by any other words, conduct, or even silence which clearly indicates that the person executing the instrument intends to irrevocably part with his control over the same; for in all cases there must be an intention to deliver in order to make the delivery effectual.

Bogie vs. Bogie, 35 Wis. 659.

Peavey vs. Tilton, 18 N. H. 151.

Ruckman vs. Ruckman, 32 N. J. Eq. 259.

Richmond vs. Morford, 30 Pac. 241.

**Acceptance.** That an instrument may be effectually delivered by one party, there must be an acceptance thereof by the other, though such acceptance will be presumed if the instrument is clearly beneficial to such party.

(a) *Acceptance.*

Moore vs. Flynn et al., 25 N. E. R. 844.

Comer vs. Baldwin, 16 Minn. 172.

Den vs. Baxter, 1 Busb. [N. C.] 341.

(b) *Presumption.*

Peavey vs. Tilton, 18 N. H. 151.

Wall et al. vs. Wall, 30 Miss. 91.

Delivery and acceptance fix the time when the instrument becomes a valid contract, no matter what date the instrument may bear; though the presumption is that it was delivered on the day of its date.

McMichael vs. Carlyle, 53 Wis. 504; 10 N. W. R. 556.

Moats vs. Moats, 19 Atl. 965.

Dawson vs. Hall et al., 2 Mich. 390.

**Escrow.** The delivery may be made to a third party, to be by him delivered to the other contracting party, upon his performing certain acts, and when these acts are performed the deed takes effect at once without further delivery. This is called a delivery in escrow, and the deed is called an escrow.

Lindley vs. Graff et al., 37 Minn. 338.

White Star Steamboat Co. vs. Morange, 8 So. R. 867.

But see,

Harkreader vs. Clayton, 56 Miss. 383.

A person executing a deed cannot create an escrow by making a conditional delivery thereof to the other party, or his agent. In such case the delivery is held to be effective at once, because a delivery in fact outweighs verbal conditions.

Hubbard vs. Greeley et al., 24 Atl. 799.

**Execution in Blank.** If a material part of the deed, such as the name of the grantee, be omitted, with the intention that it shall subsequently be filled in, the instrument is void; though it be duly signed, sealed and delivered. But the doctrine of estoppel may preclude a party from taking advantage of such fact where it would be a fraud upon innocent parties for him to do so.

Weeks vs. Maillardet, 14 East 568.

Hudson vs. Revett, 5 Bing. 368.

Dobbin vs. Cordiner, 41 Minn. 165.

**Conveyances of Land.** The development of the doctrine of a valuable consideration in conveyances of realty seems to be as follows:

(1) At common law a feoffment was valid without a consideration in consequence of the fealty incident to every such transfer of land.

Green vs. Thomas, 11 Me. 318.

(2) When the Statute of Uses came into effect, the courts of equity decided that, in order to sustain a "covenant to stand seized," there must be in addition to the seal a good consideration, and in case of a conveyance of bargain and sale a valuable consideration must accompany the seal.

Jackson vs. Sebring, 16 John. 515.

Murray vs. Klinzing, 29 Atl. 244.

Wood vs. Chapin, 13 N. Y. 509.

(3) But in modern times and in those states where statutes have been enacted to the effect that "all conveyances of land, signed and sealed by the grantor, having good authority to convey, shall be valid to pass the same, without any other act or ceremony whatever," then no consideration expressed or implied, is necessary to sustain such conveyance as between the parties thereto. Such deed is equivalent to a feoffment, with the livery of seizen omitted.

Laberee vs. Carlton & Al., 53 Me. 211.

Green vs. Thomas, 11 Me. 318.

Randall et al. vs. Ghent & Al., 19 Ind. 271.

Rogers vs. Hillhouse, 3 Conn. 398.

Jackson et al. vs. Cleveland et al., 15 Mich. 94.

Comstock vs. Son, 154 Mass. 389; 28 N. E. R. 296.

Thompson vs. Thompson, 9 Ind. 323.

The consideration imported by the seal is insufficient to sustain the conveyance, as against the grantor's existing creditors, but it is sufficient as against his subsequent creditors.

Washband vs. Washband, 27 Conn. 424.

Mohawk Bank vs. Atwater, 2 Paige 54.

Gale vs. Gould and Hammond, 40 Mich. 515.

**Illustrations of Valuable Consideration.** Marriage, and even a promise to marry, are regarded and held to be valuable considerations.

Frank's Appeal, 59 Pa. St. 190.

Smith vs. Allen, 5 Allen 454.

Snell & Al. vs. Bray, 56 Wis. 156.

Peck vs. Vandemark, 99 N. Y. 29.

So, work and services are esteemed in law as a valuable and sufficient consideration to sustain a promise.

Lewis vs. Trickey, 20 Barb. 387.



A transfer and assignment of property, including choses in action, are a sufficient valuable consideration to sustain a promise.

Whittle vs. Skinner, 23 Vt. 531.

The abstaining from the exercise of personal rights, such as the right to use tobacco, intoxicating liquors, the playing of billiards and other similar exercises, has been held sufficient and valuable consideration to sustain a promise.

Talbott vs. Stemmons' Ex., 89 Ky. 222.

Hamer vs. Sidway, 124 N. Y. 538.

Forbearance to enforce any legal or equitable right is a valuable consideration sufficient to sustain a promise.

Leverenz vs. Haines, 32 Ill. 357.

Stevens vs. Fisher, 20 Wend. 181.

Wheeler vs. Slocumb, 16 Pick. 52.

A moral obligation, which was once a legal obligation, is sufficient to sustain a promise. Hence claims, voidable because of infancy, or barred by the statute of limitations, or by bankruptcy proceedings, are a valuable consideration sufficient for a promise to pay such claims.

Keener vs. Crull and wife, 19 Ill. 189.

Higgins vs. Dale, 28 Minn. 126.

Reed vs. Batchelder, 1 Metc. 559.

Dodge vs. Adams, 19 Pick. 429.

A promise on the part of one person to do, or not to do, a certain act, is a valuable consideration and sufficient to sustain a promise from the other party to the contract to do or not to do some specific act.

Funk vs. Hough et al., 29 Ill. 145.

Missisquoi Bank vs. Sabin, 48 Vt. 239.

Mutual and simultaneous promises are held to be each a valuable and sufficient consideration for the other.

Earle vs. Angell, 32 N. E. R. 164.

Flanders vs. Wood et al., 18 S. W. R. 572.

Appleton vs. Chase et al., 19 Me. 74.

M'Neill vs. Reid, 9 Bing. 68.

Wightman vs. Coates, 15 Mass. 1.

Hutton vs. Mansell, 3 Salk. 16.

But a promise is not a consideration for a promise, unless there is an absolute mutuality of agreement, so that each party has the right at once to hold the other to a positive agreement.

Bailey vs. Austrian, 19 Minn. 535 (G. 465); Same 203.  
Chicago etc. Ry. vs. Dane, 43 N. Y. 240.  
Hurd vs. Gill, 45 N. Y. 341.  
Robson vs. Miss. Log. Co., 61 Fed. R. 893.

Mutual promises that the performance of a contract shall be postponed to a certain day are each a valuable consideration for the other, or others.

McNish vs. Reynolds, etc., 95 Pa. St. 483.  
Goss vs. Nugent, 5 B. & Ad. 58.

And in case of mutual promises one promise may be express and the other implied; and, in certain cases, one may be written and the other oral.

Jones vs. Binford, 74 Me. 440.  
Dicken vs. Morgan, 54 Ia. 684.

**Subscription.** Where several persons subscribe and promise to pay money for some special purpose, as to build a court-house, or a church, and on the strength of such promise the promisee has made expenditures of money, or incurred liabilities, then such expenditure or assumption of liability is sufficient to make the promise of each binding, on the ground that it would be bad faith and unequitable to induce one party to make expenditures by a promise and then decline to fulfil it.

Holmes vs. Dana, 12 Mass. 190.  
Comstock vs. Howd, 15 Mich. 237.

And, if one person subscribe alone to such public or charitable purpose, any act, such as expending money on the strength of such subscription or promise, will constitute a sufficient consideration to sustain the promise.

Cottage St. Church vs. Kendall, 121 Mass. 528.  
Me. Central Institute vs. Haskell, 73 Me. 140.  
Presbyterian Society vs. Beach, 74 N. Y. 72.  
Simpson College vs. Bryan, 50 Ia. 293.

But the death, or insanity, of a subscriber, before the pledge has been acted upon, acts as a revocation of the subscription or promise.

Pratt vs. Baptist Society, 93 Ill. 475.

Beach vs. First M. E. Church, 96 Ill. 177.

Helfenstein's Estate, 77 Pa. St. 328.

As to whether the promise of one subscriber may be regarded as a consideration for the promise of the other subscribers there is a diversity of opinion between the older and the more recent cases. That one promise is a consideration for the other promise, or promises, has been held by the following cases:

George et al. vs. Harris, 4 N. H. 533.

Cong. Society vs. Perry, 6 N. H. 164.

Trustees etc. vs. Stetson, 5 Pick. 506.

But see,

Trustees etc. vs. Davis, 11 Mass. 113.

Culver et al. vs. Banning, 19 Minn. 303.

An act done by request of the promisor is a sufficient consideration to sustain a promise of recompense therefor, made either before or after the performance of the act.

Dearborn vs. Bowman, 3 Metc. 155.

Mills vs. Wyman, 3 Pick. 207.

Loomis vs. Newhall, 15 Pick. 159.

Where one voluntarily does for another that which the other was legally bound to do for himself, a subsequent promise of recompense by the party thus benefited will be equivalent to a previous request, and hence based upon a sufficient consideration.

Gleason vs. Dyke, 22 Pick. 390.

Where the consideration is partly past and partly executory, a promise founded upon both, will be supported by the part which is executory, as where a father agreed to pay for his son's board for the future and also for the past, provided the plaintiff would continue to board the son.

Loomis vs. Newhall, 15 Pick. 159.

Under certain circumstances the consideration must be fully executed before it will be sufficient to sustain a promise,

as where a reward is offered for the return of lost property, the property must be returned before the promise is binding, as until that time there is no consideration for the promise.

Gilmore vs. Davis, 12 Oh. 281.

Furman vs. Parke, 21 N. J. L. 310.

Trust and confidence reposed in a person is sufficient consideration to sustain a promise, on the part of the person so trusted or confided in, as where one pays money into the hands of another, who promises to deposit the same in the bank, or to make other disposition thereof. The trusting the money to the person is the consideration for his promise to so dispose of it.

Coggs vs. Bernard, 2 Ld. Ray. 909-19.

Rutgers vs. Lucet, 2 Johns. Cas. 92 (n).

Doorman vs. Jenkins, 2 A. & E. 256.

Bainbridge vs. Firmstone, 8 A. & E. 743.

Jenkins vs. Bacon, 111 Mass. 373.

**Prevention of Litigation.** The courts favor the prevention of litigation; and hence when one person surrenders a part of his disputed claim by way of compromise, in consideration of a promise by the other party to pay the balance, the surrender of that part is a valuable consideration and sufficient to support a promise, whether executory or executed, as where A, holding a tax deed on B's land, by way of compromise quit-claimed one-half the land to B, and B quit-claimed the other half to A, though it finally proved that the tax deed was void.

Hall vs. Wheeler, 37 Minn. 522.

Van Dyke et al. vs. Davis et al., 2 Mich. 145.

Hoge vs. Hoge, 1 Watts 163-217.

Barlow vs. Ocean Ins. Co., 4 Metc. 270.

Northern Lib. Market Co. vs. Kelly, 113 U. S. 199.

But the claim so compromised must be made by one party against the other in good faith, with color of right; otherwise the consideration would not be sufficient, being tainted with fraud.

Gates vs. Shutts, 7 Mich. 126.

Headley vs. Hackley, 50 Mich. 43.

O'Brien vs. Mayor etc., 55 N. Y. S. 50.

In a composition contract, by an insolvent debtor with his creditors, the surrender by each creditor of a part of his claim and forbearance to insist upon full payment is a sufficient consideration to sustain the promise of the other creditors to do likewise, and also the promise of the debtor to pay the sum which the creditors have agreed to accept.

Good vs. Cheesman, 2 Barn. & Ad. 328-335.

Perkins vs. Lockwood, 100 Mass. 249.

Brown vs. Farnham, 48 Minn. 317; 51 N. W. R. 377.

White vs. Kuntz et al., 107 N. Y. 518.

But in an agreement between a debtor and a single creditor, whereby the debtor is to pay less than the full amount of his debt, the promise by the creditor to take such lesser sum is without consideration, while such an agreement between a debtor and two or more creditors by way of composition would be valid.

Pierson vs. McCahill, 21 Cal. 123.

Perkins vs. Lockwood, 100 Mass. 249.

Arbitration is also looked upon with favor by the courts, and hence mutual submission of demands to arbitration is binding upon the parties, as the mutual promises are a consideration, each for the other.

Hodges vs. Saunders, 17 Pick. 470.

Penn vs. Lord Baltimore, 1 Ves. Sr. 444.

Jones vs. Boston Mill Corporation, 4 Pick. 507.

Jones vs. Boston Mill Corporation, 6 Pick. 148.

From the foregoing illustrations of valuable consideration, we deduce the following well settled rule of law: "That if a benefit accrues to him who makes the promise; or if any loss or disadvantage accrues to him to whom it is made, and accrues at the request or on motion of the promisor, although without benefit to the promisor, in either case the consideration is sufficient to sustain assumpsit."

**Things Not a Valuable Consideration Sufficient to Sustain an Executory Promise.** A mere moral obligation has been held insufficient, as a consideration, to support an executory promise.

Mills vs. Wyman, 3 Pick. 207.

Cook vs. Bradley, 7 Conn. 57.

A past consideration is not sufficient to support a subsequent executory promise, as where one promises to pay for services already performed.

Roscorla vs. Thomas, 3 Q. B. 234.

Parr vs. Jewell, 17 C. B. 584-711.

Dearborn vs. Bowman, 3 Metc. 155.

Nor will a past consideration, preceded by a request, not implying a promise of recompense, be sufficient to sustain a subsequent promise, as where one requests services to be performed for him, both parties understanding them to be gratuitous, though afterwards the party benefitted promises to pay therefor.

Allen vs. Bryson, 67 Ia. 591.

Nor will a promise to do, or the actually doing of, that which one is legally obliged to do be a sufficient consideration to sustain a promise.

Jennings vs. Chase, 10 Allen 526.

There are certain things, or actions, which cannot constitute a valuable consideration because of the impossibility of their performance.

**Impossibility in Fact.** If the thing agreed to be done by either party is absolutely impossible at the time the agreement is made, and was known to be by all parties, no contract can result because the parties could not have intended to change their legal relations with respect to one another by performing the act, as where in a charter party, executed on March 15th, it was stipulated that a certain ship should sail on February 12th preceding.

Hall vs. Cazenove, 4 East 477.

If the parties are ignorant of the impossibility of performing the act agreed upon, the question often arises, whether they intended the act to be performed conditionally or unconditionally. If one undertakes to sell and deliver a chattel on a certain day, and at the time of the agreement the chattel no longer exists, but both parties are ignorant of that fact, it is generally held that the parties contracted on the basis of the existence of the thing, and that there is an implied condition

that if the performance is impossible, because of its non-existence, no contract was intended.

Hastie vs. Couturier, 9 Exch. 102.

Taylor vs. Caldwell, 3 B. & S. 826.

Franklin and Armfield vs. Long, 7 Gill. & John. 407.

Ward vs. Vance, 93 Pa. St. 499.

Walker et al. vs. Tucker et al., 70 Ill. 527.

But if a person undertakes absolutely to do a certain thing, clearly taking all risks against the impossibility of performance, he will not be excused for non-performance because of the impossibility of doing what he has covenanted to do.

Franklin and Armfield vs. Long, 7 Gill. & John. 407.

Anderson vs. May, 50 Minn. 280.

Thornborow vs. Whitacre, 2 Ld. Ray. 1164.

And where the performance of a promise becomes absolutely impossible after the agreement has been entered into, the general rule is now well established that the contract is binding upon the party, who has undertaken to do that which has subsequently become absolutely impossible, upon the ground that the party has an opportunity to protect himself against such misfortune by a stipulation in his contract; and if he fails to do so the courts will not make a better contract for him than he has seen fit to make for himself.

Stees vs. Leonard, 20 Minn. 494.

The Harriman, 9 Wall. 161.

Bacon et al. vs. Cobb et al., 45 Ill. 47.

But, if the promisee has made the performance of the thing agreed to be done impossible by his own act, then, of course, the promisor is excused.

Holme vs. Guppy, 3 M. & W. 387.

Goodwin vs. Holbrook, 4 Wend. 377.

But, if the promisor himself renders the thing to be done impossible, he is, of course, not excused from liability.

Bigland vs. Skelton, 12 East 436.

Beswick vs. Swindells, 3 A. & E. 868.

**Impossibility in Law.** Where the matter of the agreement is legally impossible, no valid contract can be made by the

parties, because both are presumed to know the law, which they are undertaking to violate.

Harvey vs. Gibbons, 2 Lev. 161.

Stevens vs. Coon, 1 Pinney (Wis.) 356.

Faulkner vs. Lowe, 5 Exch. 595.

If, after the contract is made, the thing agreed to be done becomes impossible in law, the promisor is excused from performance.

Cordes vs. Miller, 39 Mich. 581.

**Adequacy of Consideration.** As we have seen, there must be some consideration to sustain a promise, but the courts permit the parties to decide, as a general rule, what is sufficient; and hence the inadequacy of consideration is not as a rule a ground for avoiding a contract.

Worth vs. Case, 42 N. Y. 362.

Hubbard vs. Coolidge, 1 Metc. 84-93.

Clark vs. Sigourney, 17 Conn. 510.

Thompkins vs. Philips, 12 Ga. 53.

Molyneux vs. Collier, 17 Ga. 46.

Woolford vs. Powers, 85 Ind. 294.

Lawrence vs. McCalmont et al., 2 How. 426.

**Exceptions.** The doctrine that inadequacy of consideration will not as a rule vitiate a contract does not apply to a mere exchange of sums of money, the values of which are exactly fixed.

Schnell vs. Nell, 17 Ind. 29.

So courts of equity will enquire into the adequacy of consideration, and refuse to enforce specific performance of a contract, if the consideration is so inadequate as to make it unconscionable.

Wollums vs. Horsley, 20 S. W. R. 781.

Harrison vs. Town & Dixon, 17 Mo. 237.

**From Whom Must Consideration Pass.** The general rule of law is that a person, who is not a party to a simple contract, from whom no consideration moves, cannot sue on the contract, and consequently a promise made by one person to



another for the benefit of a third person, who is a stranger to the consideration, will not support an action by the latter.

Exchange Bank vs. Rice, 107 Mass. 37.

Wheeler vs. Stewart, 94 Mich. 445.

Wheeler vs. Stewart, 54 N. W. R. 172.

Adams vs. Kuehn, 13 Atl. R. 184.

Price vs. Easton, 4 B. & Ad. 433.

Crow vs. Rogers, 1 Strange, 592.

**Exceptions.** But there are important exceptions to this rule, "one of them and by far the most frequent one is the case where, under a contract between two persons, assets have come to the promisor's hands, or under his control, which in equity belong to a third person. In such a case it is held that the third person may sue in his own name. But, then, the suit is founded rather on the implied undertaking the law raises from the possession of the assets than of the express promise. Another exception is where the plaintiff is the beneficiary solely interested in the promise, as where one person contracts with another to pay money, or to deliver some valuable thing, to a third person. But where a debt already exists from one person to another, the promise by a third person to pay such debt being primarily for the benefit of the original debtor, and to relieve him from liability to pay it (there being no novation), he has a right of action against the promisor for his own indemnity; and if the original creditor can also sue, the promisor would be liable to two separate actions, and therefore the rule is that the original creditor cannot sue."

National Bank vs. Grand Lodge, 98 U. S. 123.

This seems to be the rule in England, in the Federal courts, and in some State courts of this country; but in a large majority of the States this rule is repudiated, and it is held that "an action lies on a promise made by the defendant, upon valid consideration by a third person for the benefit of the plaintiff, although the plaintiff was not privy to the consideration"

\* \* as where A loaned money to the defendant, upon his promise to pay it to the plaintiff, to whom A stated that he owed and had promised to pay a like sum, there being no other evidence of the fact than such declaration."

Lawrence vs. Fox, 20 N. Y. 268.

Maxfield vs. Schwartz, 43 Minn. 221.

Barnes vs. Heckla Fire Ins. Co., 57 N. W. R. 314.  
Bristow et al. vs. Lane et al., 21 Ill. 194.  
Bohannon vs. Pope & al., 42 Me. 93.  
Wood vs. Moriarty, 9 Atl. R. 427.  
Shamp vs. Meyer, 20 Nebr. 223; 29 N. W. R. 379.  
Coleman vs. Whitney, 62 Vt. 123; 20 Atl. 322.

**Illegality of Consideration.** An agreement to do any act forbidden by law will not be enforced by the courts, and this is true whether the act be in violation of a statute, or common law, or contrary to public policy.

The object of a contract may be lawful, while the consideration is unlawful, as where one person promises to marry another in consideration of illicit intercourse. Marriage is lawful but such a consideration is unlawful.

Hanks vs. Naglee, 54 Cal. 51.

And, on the other hand, the object of a contract may be unlawful, while the consideration involved may not be in violation of any law, as where two persons already married may promise to marry each other. Mutual promises to marry are lawful and valid considerations, one for the other; but where the object is bigamy the agreement is unlawful and void.

Paddock vs. Robinson, 63 Ill. 99.

**Statute.** A statute may forbid the performance, or omission, of an act by express prohibition or implication, and in either case an act in violation thereof is not a sufficient consideration to sustain a promise, as in the case of a directory statute without any penalty being provided for its violation.

Eaton vs. Kegan, 114 Mass. 433.

And the same is true whether the statute is commandatory and accompanied with a penalty.

Ingersoll vs. Randall, 14 Minn. 400.

Dillon & Palmer vs. Allen, 46 Ia. 299.

**Usury.** In Minnesota and in many other states, certain agreements are declared to be void, such as agreements tainted with usury.

Jordan vs. Humphrey, 31 Minn. 495.

Ormund vs. Hobart, 36 Minn. 306.

**Sunday Contracts.** At common law a contract made on Sunday was valid; but in many states of the Union, agreements made upon that day are either expressly, or by implication, made unlawful.

Hanchett vs. Jordan, 43 Minn. 149.

First Nat. Bank vs. Kingsley, 84 Me. 111; 24 Atl. R 794.

Plaisted vs. Palmer, 63 Me. 576.

In this last case a horse was sold on Sunday and a note given therefor, which however was not delivered until Monday; but the court held that the contract being made on Sunday could not be ratified on a week day, and that there must be a full, new contract in order to be valid.

Pope vs. Linn, 50 Me. 83.

Tillock vs. Webb, 56 Me. 100.

But as to ratifying a note, which is void because made on Sunday, some jurisdictions go to the extent of claiming that the same may be ratified on a week day.

Williamson vs. Brandenburg, 32 N. E. R. 1022.

Russell vs. Murdock, 44 N. W. R. 237.

An agreement made on Sunday, by which property is transferred to the vendee, is void, and such property cannot be recovered by the vendor, nor by his creditors.

Foster vs. Wooten, 56 Miss. 217; 7 So. R. 501.

As the parties are *in pari delicto*, neither has any remedy against the other on the agreement; and the courts will not lend their aid to help either party, who has tried to violate and has violated the law.

Smith vs. Bean, 15 N. H. 577.

Varney vs. French, 19 N. H. 233.

**Lotteries.** Lotteries were early made unlawful by statute in England, and are generally so in America.

Seidenbender vs. Charles' Adm., 4 Ser. & Rawle 151.

State vs. Moren, 48 Minn. 555.

**Wagers.** A wager is a contract conditioned upon an event in which the parties have no interest except that which they create by the wagering agreement; but at common law such

contracts were enforceable, while by statute they are generally prohibited.

Good vs. Elliott, 3 T. R. 693.

The English rule was that a wager should be upheld unless (1) it was prohibited by statute, or (2) unless it were against public policy, or (3) unless it was calculated to affect the interests, character and feelings of third parties; and in California the English rule was early adopted.

Johnson vs. Fall, 6 Cal. 359.

Beadless vs. Bless, 27 Ill. 320.

Smith vs. Smith, 21 Ill. 244.

But other American courts have held the contrary doctrine, and have refused to enforce wagering contracts or bets.

Love vs. Harvey, 114 Mass. 80.

Wheeler vs. Spencer, 15 Conn. 27.

Cooper vs. Brewster, 1 Minn. 94.

Wilkinson vs. Tousley, 16 Minn. 299.

In the last case cited Wilkinson and Farmer bet on a horse-race, and put the money into Tousley's hands. The plaintiff lost, and before Tousley paid over the money to Farmer, plaintiff demanded the part which he had thus put up, but Tousley refused to return it to him and the plaintiff sues for its recovery. The court holds that the agreement was void, and that the plaintiff could recover the money while it was yet in the hands of the stakeholder, or after he had paid it over provided the plaintiff had demanded it while it was still in the stakeholder's hands. The stakeholder is not regarded as a party to the illegal agreement, but as a mere depositary of both parties for the money deposited by them respectively, with a naked authority to deliver it over on the proposed contingency, and if the authority is actually revoked before the money is paid over it remains a naked deposit to the use of the depositor. To the same effect see,

Gilmore vs. Woodcock, 69 Me. 118.

Eldred vs. Malley, 2 Col. 320.

Winchester vs. Nutter, 52 N. H. 507.

Thomas vs. Cronise, 16 Oh. 54.

West vs. Holmes, 26 Vt. 530.

**Insurance Policies.** A contract for marine, fire, or life insurance, where the assured has no interest in the subject insured, and where as usual the assured agrees to pay a certain sum of money in consideration of a larger sum of money to be paid by the insurer in case of loss, is void as a wagering contract.

**Marine.** At common law marine insurance was good, without interest in the thing insured, until it was forbidden by statute; but this is not generally true in America.

*Amory vs. Gilman*, 2 Mass. 1.

**Fire.** A contract of insurance against fire, on property in which the assured has no interest, is void.

*Sweeney vs. Franklin Fire Ins. Co.*, 20 Pa. St. 337.

**Life.** The same is true regarding life insurance. The person taking out the insurance must have an insurable interest in the life insured, as a child in the life of a parent, or a parent in the life of a child, or a husband in the life of his wife. But it is impossible to lay down an absolute rule by which one can tell positively when one person has such insurable interest in the life of another; but where any such interest is lacking the so-called contract of insurance is void.

*Forbes vs. Am. Mut. Life Ins. Co.*, 15 Gray 249-254.

(The subject of Insurance is largely regulated by statute, and will be considered in a separate course of lectures hereafter.)

**Common Law.** So, an agreement to commit a common law crime, or any indictable offense, such as to commit bigamy, arson, or trespass, is void.

*Paddock vs. Robinson*, 63 Ill. 99.

*Henderson vs. Palmer*, 71 Ill. 579.

*Hatch vs. Mann*, 15 Wend. 45.

*Sternburg vs. Bowman*, 103 Mass. 325.

And it is immaterial whether the things forbidden, at the common law or by statute, are *malum in se* or *malum prohibitum*.

*Penn vs. Bornman et al.*, 102 Ill. 523.

**Against Public Policy.** There are many acts which are not crimes, either at common law or by statute, yet the courts hold

them as contrary to public policy; and agreements to commit such acts cannot ripen into valid contracts.

**Contracts in Restraint of Marriage.** Contracts in restraint of marriage have been looked upon from the earliest days as contrary to public policy, and the courts have refused to enforce them.

Hartley vs. Rice, 10 East. 22.

Chalfant vs. Payton et al., 91 Ind. 202.

Shackelford vs. Hale, 19 Ill. 211-215.

And so agreements to bring about a marriage for a reward are looked upon equally with disfavor, being known as marriage brokerage contracts.

Johnson's Adm. vs. Hunt, 81 Ky. 321.

Crawford vs. Russell, 62 Barb. 92.

So an agreement between husband and wife, providing for a possible separation in the future, is void, as it tends to facilitate such separation. Parties having assumed the marriage relation, the law fixes certain rights and liabilities, which it is impossible for the parties to change by contract, and all agreements in violation of these rights and duties are void.

The People vs. Mercein, 8 Paige 47-68.

**Restraint of Trade.** Agreements in general restraint of trade are held to be void, on the ground that they deprive the public of useful services and encourage enforced idleness.

Alger vs. Thacher, 19 Pick. 51.

Bishop vs. Palmer, 146 Mass. 469.

Arnot vs. Pittson and Elmira Coal Co., 68 N. Y. 558.

Craft vs. McConoughy, 79 Ill. 346-348.

Palmer vs. Stebbins, 3 Pick. 188-191.

Collins vs. Plantern, 1 Smith's Ld. Cas. 646.

But contracts in partial restraint of trade are frequently upheld. There is no established rule by which one can determine what is reasonable and unreasonable restraint of trade. That question must be determined very largely by the facts and circumstances of each particular case.

Oregon, etc. Co. vs. Winsor, 20 Wall. 64.

Gilman vs. Dwight, 13 Gray 356.

Chappel vs. Brockway, 21 Wend. 157.

Wiley vs. Baumgardner, 97 Ind. 66, (n).

**Competition at Auction.** Agreements to suppress competition at auctions are void, on the ground that they are a fraud on the person whose property is being sold and generally harmful as against public policy.

Gardiner vs. Morse, 25 Me. 140.

Loyd et al. vs. Malone et al., 23 Ill. 41.

Wooten vs. Hinkle, 20 Mo. 290.

Atcheson vs. Mallon, 43 N. Y. 147.

**Futures.** Agreements for the sale of goods to be delivered in the future, with the understanding by the parties that no delivery shall be made, but the difference between the price agreed upon and the market price on the day of delivery shall be paid to the party in whose favor it is, are void as against public policy.

Mohr vs. Miesen, 47 Minn. 228.

Irvin vs. Williar, 110 U. S. 499.

Cobb vs. Prell, 22 Am. Law Reg. 613 n.

**Public Service.** Agreements which tend to the injury of the public service are also void, on the ground that they are against public policy, such as an agreement to use one's influence to elect another person to office, or to use his influence for the appointment of one to a public office, or an agreement to lobby for legislation, or to secure a pardon for a convict, or to work for judicial clemency, or to secure the favorable action of any public servant. The law looks to the general tendency of such agreements, and closes the door to temptation by refusing to enforce them.

Nichols vs. Mudgett, 32 Vt. 546.

Gray vs. Hook, 4 N. Y. 449.

Elston's Trustee's vs. Hines, 5 Pa. St. 452.

Marshall vs. Baltimore & Ohio Ry., 16 How. 314.

Trist vs. Child, 21 Wall. 441.

Hatzfield vs. Gulden, 7 Watts. 152.

Kribben vs. Haycraft, 26 Mo. 396.

Moyer vs. Cantieny, 41 Minn. 242.

Buck vs. First Nat. Bank of Paw Paw, 27 Mich. 293.

McGuire vs. Corwine, 101 U. S. 108.

Tool Co. vs. Norris, 2 Wall. 45-56.

So agreements tending to obstruct the course of public justice are void, such as agreements to prevent the prosecution

of a criminal, the spiriting away of witnesses, the destruction of testimony.

Henderson vs. Palmer, 91 Ill. 579-583.

Kennedy vs. Hodges, 25 S. E. R. 493.

Also agreements tending to encourage litigation, such as maintenance and champerty, which were both common law offenses, were void at common law.

2 Parsons on Contracts, 891.

So agreements involving sexual immorality, or the doing of any act contrary to good morals, are void, the courts refusing absolutely to enforce them.

Hanks vs. Naglee, 54 Cal. 51.

Brown vs. Tuttle, 80 Me. 162; 13 Atl. 583.

**Consideration Void in Part.** If any part of the consideration for a promissory note, or other entire contract, be illegal, the agreement is void *ab initio*.

Woodruff vs. Hinman, 11 Vt. 592.

Deering vs. Chapman, 22 Me. 488.

Town of Hinesburg vs. Sumner, 9 Vt. 23.

Loomis vs. Newhall, 15 Pick. 159.

Crawford vs. Morrell, 8 Johns. 253.

McBratney vs. Chandler et al., 22 Kan. 482.

But if the contract is not entire, so it can be separated, and one part is legal and the other part is illegal, the legal part shall stand and the illegal fall.

Carradine vs. Wilson, 61 Miss. 573.

Goodwin vs. Clark et al., 65 Me. 280.

**Failure of Consideration.** Where the consideration wholly fails, the agreement is said to be a nudum pactum, and the contract will not be enforced.

Rice vs. Goddard, 14 Pick. 293.

Thompson vs. Wheeler Mfg. Co., 29 Kan. 340.

But if there is a partial failure of consideration, the courts will generally take that fact into consideration in adjusting the rights of the parties, by way of reduction of damages for a breach of the contract or in some other manner.

Stevens vs. Johnson, 28 Minn. 172.



Harrington vs. Stratton, 22 Pick. 510.

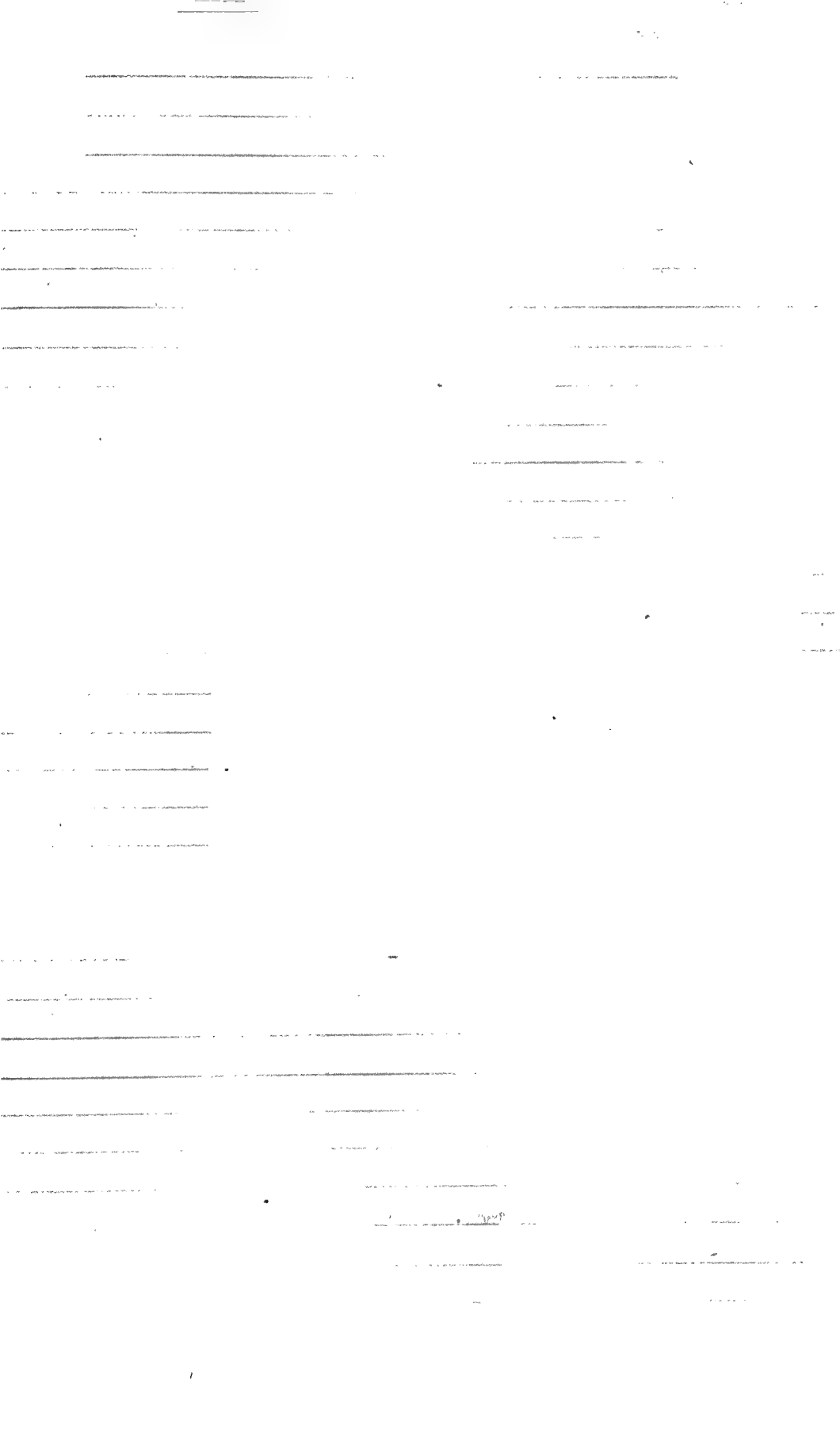
Torinus vs. Buckham, 29 Minn. 128.

But where there is an utter want of consideration for an agreement there is no contract, as between the parties to such agreement, though there might be in the case of negotiable paper in the hands of innocent third parties.

Pearson vs. Pearson, 7 John. 25.

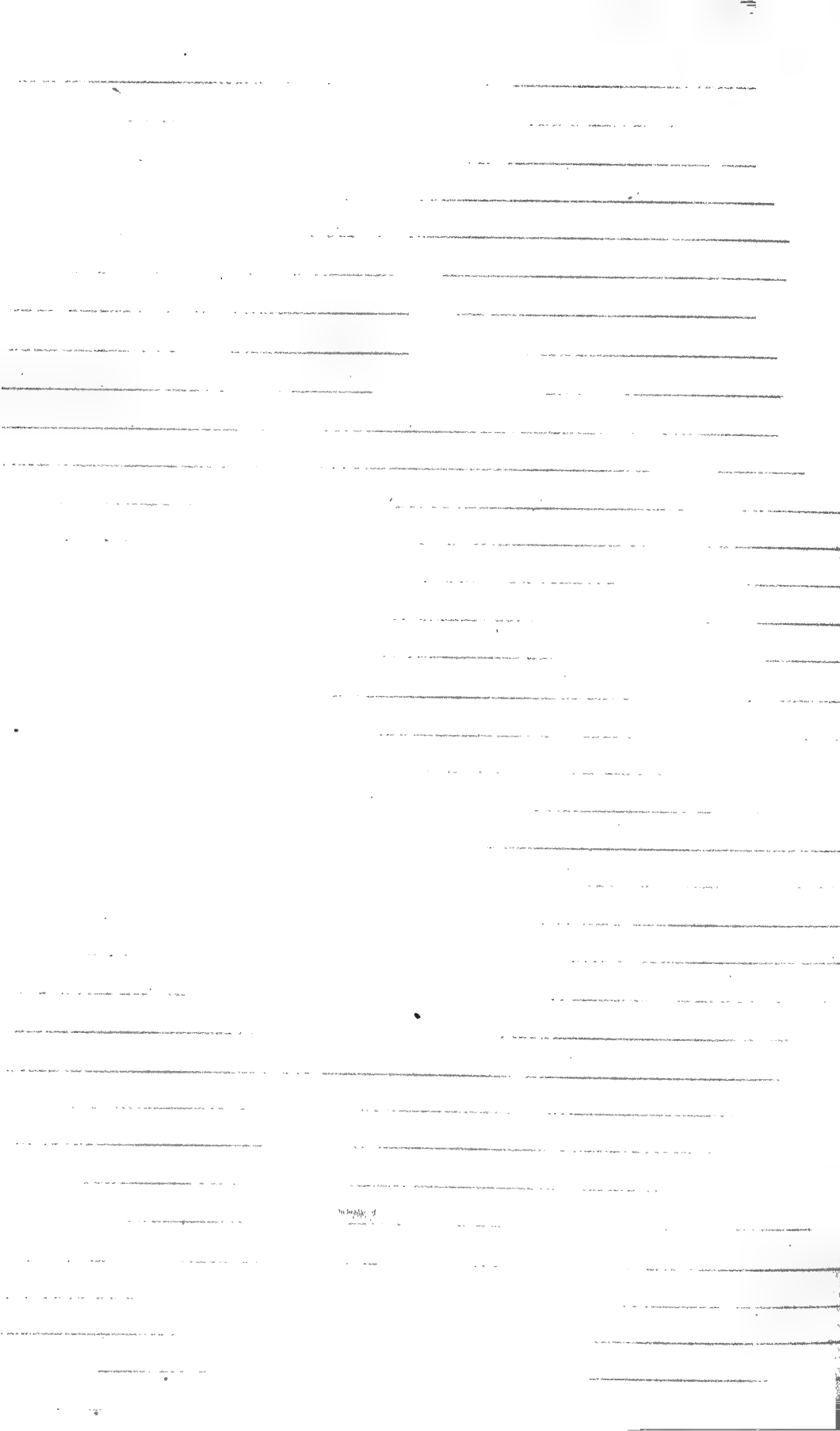
FURTHER DEDUCTIONS AND DICTA.











**LEX LOCI CONTRACTUS.**

It has been observed in the foregoing cases that a contract may be valid in one jurisdiction but void in another. Parties capable of contracting in one state may not be able to contract in another, and a consideration which is valid in one state may not be valid in another. According to what laws then is the validity of a contract to be determined? For the discussion of this question we will examine the following authorities :

- \*Hyde vs. Goodnow, 3 N. Y. 266.
- Tyler vs. Trabue, 8 B. Mon. 306.
- Stacy vs. Baker, 1 Scam. 417.
- Smith & Co. vs. McLean, 24 Ia. 322.
- Hoyt vs. Thompson's Ex., 19 N. Y. 207.
- Knowlton vs. The Erie Ry. Co., 19 Oh. St. 260.
- Bond vs. Cummings, 70 Me. 125.
- Kennedy vs. Cochrane, 65 Me. 594.
- Wilson vs. Stratton, 47 Me. 120.
- Stevenson vs. Payne, 109 Mass. 378.
- Banchor vs. Mansel, 47 Me. 58.
- Merchant's Bank vs. Griswold, 72 N. Y. 472.
- Benners vs. Clemens, 58 Pa. St. 24.
- Suit vs. Woodhall, 113 Mass. 391.
- Bigelow vs. Burnham, 57 N. W. R. 865.





## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

**Deductions and Dicta from Cases Examined.**

Contracts are often executed in one state to be performed elsewhere, and the question frequently arises in such cases, whether the contract is to be governed by the laws of the state where the contract is executed, or the laws of the state where it is to be performed. Hence it becomes necessary to determine whether the contract is really made in the one state or the other. As a general rule contracts are regarded as being made in the state or country where they are to be performed, and if they are valid in that state they are valid everywhere, and if they are void in that state they are void everywhere.

Hyde vs. Goodnow, 3 N. Y. 266.

Some cases hold that promissory notes are made in the state where they are payable, and are controlled by the laws of that state.

Tyler vs. Trabue, 8 B. Mon. 306.

Stacy vs. Baker, 1 Scammon 417.

And when an offer is made by a person in one state to a person in another, the place where the offer is accepted is generally regarded as the place where the contract is made.

Andrews vs. Herriot, 4 Cowen 508.

Bigelow vs. Burnham, 57 N. W. R. 865.

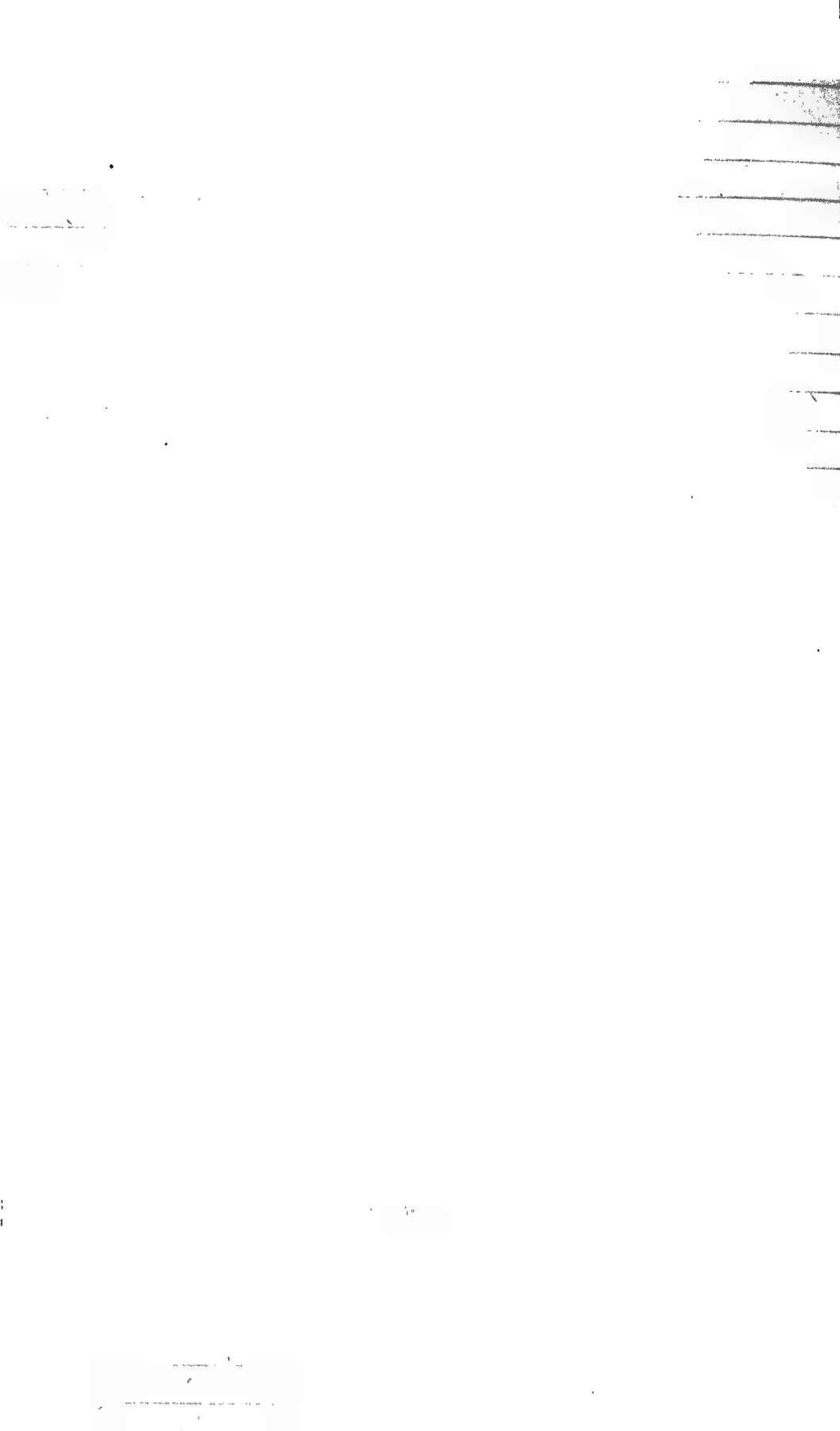
1 Wharton on Contracts, §20.

(This subject will be pursued further in the study of Private International Law.)

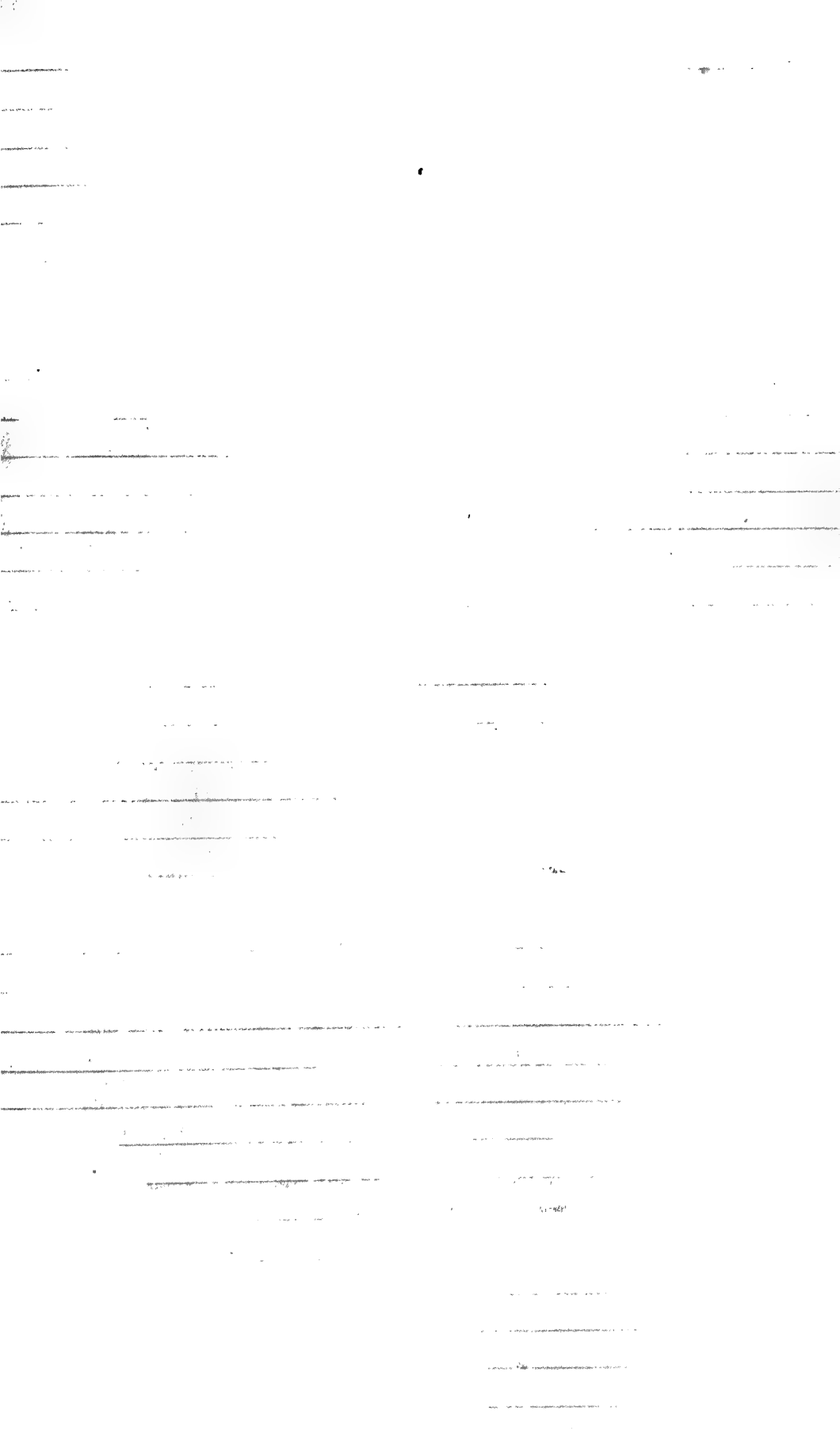
**FURTHER DEDUCTIONS AND DICTA.**













## PART IV.

## STATUTE OF FRAUDS.

Notwithstanding there are parties competent to contract, and their mutual, free and concurrent assent is given to the act to be done or omitted, and the consideration involved in their agreement is in all respects valid and sufficient, yet such agreement will not ripen into a contract maintainable and enforceable at law in certain cases, unless it is reduced to writing and signed by one or more of the parties thereto.

Contracts may be enforceable, though oral, unless the law requires them to be in writing; and the law which makes this requirement in a great majority of cases is known as the "statute of frauds" which was enacted in England in 1677, to prevent frauds and perjuries, and is designated 29 Car. II, C, 3. The two sections of this statute particularly affecting simple contracts are as follows:

§ 4. "That no action shall be brought whereby to charge any executor or administrator upon any special promise, to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract, or sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

§ 17. "That no contract for the sale of any goods, wares, and merchandise, for the price of 10 lbs. sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold and actually receive the same, or give

something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto authorized."

This statute has been adopted in a modified form in most, if not all of the states of the Union; and in Minnesota the statute is in part as follows:

§ 4209. *No action maintainable on agreement, when.*

No action shall be maintained in either of the following cases, upon any agreement, unless such agreement, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party charged therewith:

First. Every agreement that by its terms is not to be performed within one year from the making thereof;

Second. Every special promise to answer for the debt, default or doings of another;

Third. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promise to marry.

§ 4210. *Contract for the sale of goods void, when.*

Every contract for the sale of any goods, chattels or things in action, for the price of fifty dollars or more, shall be void unless,

First. A note or memorandum of such contract is made, in writing, and subscribed by the parties to be charged therewith; or

Second. Unless the buyer accepts and receives part of such goods, or the evidences, or some of them, of such things in action; or,

Third. Unless the buyer, at the time, pays some part of the purchase-money.

§ 4213. *Conveyance, etc., of land to be in writing.*

No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the parties creating, granting, assigning, surrendering or declaring the same, or by their lawful agent thereunto authorized by writing.

§ 4215. *Leases for more than one year—Contracts for sale of land.*

Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party by whom the lease or sale is to be made, or by his lawful agent thereunto authorized, in writing; and no such contract, when made by such agent, shall be entitled to record unless the authority of such agent be also recorded.

For a further investigation of this statute we will examine the following cases:

- \*Stone vs. Dennison, 13 Pick. 1.
- McCue vs. Smith, 9 Minn. 252.
- \*La Du-King Mfg. Co. vs. La Du, 36 Minn. 473.
- Kruger vs. Leppel, 42 Minn. 6.
- Philbrook vs. Belknap, 6 Vt. 383.
- Galvin vs. Prentice, 45 N. Y. 162.
- Swanzy vs. Moore, 22 Ill. 63.
- Lockwood vs. Barnes, 3 Hill 128.
- Rogers vs. Stevenson, 16 Minn. 68.
- \*Brown vs. Sanborn, 21 Minn. 402.

*Memorandum.*

- \*Clampet vs. Bells, 39 Minn. 272.
- \*Peck vs. Vandemark, 99 N. Y. 29.
- Atwood vs. Cobb, 16 Pick. 227.
- Tice vs. Freeman, 30 Minn. 389.
- Sanborn vs. Nockin, 20 Minn. 178.
- \*The Argus Co. vs. Mayor of Albany, 55 N. Y. 495.
- Tufts vs. The Plymouth Co., 14 Allen 407.
- Chase vs. City of Lowell, 7 Gray 33.
- Moss vs. Atkinson, 44 Cal. 3.
- Spangler vs. Danforth, 65 Ill. 152.
- \*Osborne vs. Baker, 34 Minn. 307.
- \*Morin vs. Martz, 13 Minn. 191.
- Wemple vs. Knopf, 15 Minn. 440.
- Justice vs. Lang, 42 N. Y. 493.
- W. U. Tel. Co. vs. Ry. Co., 86 Ill. 246.

§ 4209.

- \*Cowles vs. Warner, 22 Minn. 449.

- Heath vs. Heath, 31 Wis. 223.  
Kent vs. Kent, 62 N. Y. 560.  
Fenton vs. Emblers, 3 Burrows 1278.  
Curtis vs. Sage, 35 Ill. 22.  
Worden vs. Sharp, 56 Ill. 104.  
\*Jellett vs. Rhode, 43 Minn. 166.  
Young vs. Dake, 5 N. Y. 463.  
\*Cole vs. Hutchinson, 34 Minn. 410.  
\*Mallory vs. Gillett, 21 N. Y. 412.  
\*Cardell vs. McNeil, 21 N. Y. 336.  
Davis vs. Patrick, 141 U. S. 479.  
Scott vs. White, 71 Ill. 287.  
Prime vs. Koehler, 77 N. Y. 91.  
Leonard vs. Vredenburg, 8 John. 28.  
\*Nichols vs. Weaver, 7 Kan. 373.  
Siemens vs. Siemens, 65 Minn. 104; 67 N. W. R. 802.  
Henry vs. Henry, 27 Oh. St. 121.  
Clark vs. Pendleton, 20 Conn. 495.  
Derby vs. Phelps, 2 N. H. 515.  
Hanson vs. Marsh, 40 Minn. 1.  
Brown & Haywood Co. vs. Wunder, 64 Minn. 450;  
67 N. W. R. 357.  
Phipps vs. McFarlane, 3 Minn. 109.  
Russell vs. Ry. Co., 39 Minn. 145.  
\*Paine vs. Fulton, 34 Wis. 83.  
\*Fontaine vs. Bush, 40 Minn. 141.  
Brabin vs. Hyde, 32 N. Y. 519.  
Stone vs. Browning, 51 N. Y. 211.  
Dow vs. Worthen, 37 Vt. 108.  
Cooke vs. Millard, 65 N. Y. 352-66.  
Combs vs. Bateman, 10 Barb. 573.  
Simmon's Hard. Co. vs. Mullen, 33 Minn. 195.  
Sharp vs. Carroll, 27 N. W. R. 833.  
Ortloff vs. Klitzke, 43 Minn. 154.  
Simpson vs. Krumdick, 28 Minn. 352.  
Gaslin vs. Pinney, 24 Minn. 322.  
\*Hunter vs. Wetsell et al., 57 N. Y. 375.
- Affecting Realty.*  
\*Scanlon vs. Oliver, 42 Minn. 538.
- Delivery of Deed.*  
Fay vs. Richardson, 7 Pick. 91.

Heffron vs. Flanigan, 37 Mich. 274.  
Regan vs. Howe, 121 Mass. 424.  
Fisher vs. Hall, 41 N. Y. 416.  
Stevens vs. Hatch, 6 Minn. 64.  
Jackson vs. Sheldon, 22 Me. 569.  
Blanchard vs. Blackstone, 102 Mass. 343.  
Westman vs. Krumweide, 30 Minn. 313.  
Marvin vs. McCullum, 20 John. 288.





ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

After the trial...

On the basis of...

The court found...

It is the court's...

There is no...

For the reasons...

After the hearing...

Under the law...

The court has...

It is the court's...

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS



DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

ACTION



ISSUE



LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION



**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION



### **Deductions and Dicta from Cases Examined.**

From the foregoing cases and others cited and examined, we deduce the following notes and deductions.

**Executed Contracts.** This statute does not apply to contracts which have been wholly executed.

Stone vs. Dennison, 13 Pick. 1.

McCue vs. Smith, 9 Minn. 252.

**Modification.** Nor can a parol modification of a written contract, within the statute, be shown; because a contract partly written and partly oral is an oral contract.

Brown vs. Sanborn, 21 Minn. 402.

**Construction.** While a contract within Section 4209 of the statute cannot be made the basis of a demand, if oral, it may nevertheless be used as a defense.

Kruger vs. Leppel, 42 Minn. 6.

La Du-King Mfg. Co. vs. La Du, 36 Minn. 473.

Philbrook vs. Belknap, 6 Vt. 383.

Galvin vs. Prentice, 45 N. Y. 162.

Swanzy vs. Moore, 22 Ill. 63.

Lockwood vs. Barnes, 3 Hill 128.

*Contra,*

King vs. Welcome, 5 Gray 41.

**Not Void.** The agreement is not void, under this section, though not in writing, as it may be used for various purposes, such as a defense in actions upon a quantum meruit, regulating the rights of the parties so far as it has been executed; and it may also determine the rights of the parties in other respects, as where one goes into possession of land under a parol lease for years and is sued as a trespasser, he may use such oral contract as a defense.

Philbrook vs. Belknap, 6 Vt. 383.

**Memorandum.** The contract need not be reduced to a formal writing under this statute, but a note or memorandum thereof will be sufficient, and what will constitute a sufficient memorandum may be learned from the following cases :

(a) The note or memorandum, for instance, need not be made at the time the contract is entered into, but at any time before the action is brought upon it.

Lerned vs. Wannemacher, 9 Allen 412-416.

Bill vs. Bament, 9 M. & W. 36.

(b) The memorandum need not pass between the parties to the agreement. It may be a letter written by the party to be charged to some third person, as where A wrote a letter to B saying he had purchased certain lands from C, describing them and mentioning the terms of sale.

Moss vs. Atkinson, 44 Cal. 3.

Spangler vs. Danforth, 65 Ill. 152.

(c) It may even consist of an entry made in the books of the party to be charged, if it sufficiently set forth the terms of the agreement and is signed by the proper party.

The Argus Co. vs. Mayor of Albany, 55 N. Y. 495.

Tufts vs. The Plymouth Co., 14 Allen 407.

Chase vs. City of Lowell, 7 Gray 33.

(d) The memorandum may be contained in more papers than one, and if but one of the papers is signed the others must be in some way referred to, so as to show that they all have reference to the same transaction.

Morton vs. Dean, 13 Metc. 385.

Peck vs. Vandemark, 99 N. Y. 29.

(e) Or one paper, containing a part of the contract, may be attached to another properly signed and so made a part of it.

Tallman vs. Franklin, 14 N. Y. 584.

(f) But the memorandum must show who are the parties to the contract, either by naming them, or by so describing them that they can be identified.

McConnell vs. Brillhart, 17 Ill. 354.

(g) And such memorandum must also show the substance of the agreement with reasonable certainty.

Atwood vs. Cobb, 16 Pick. 227.

(h) And where one paper, constituting a part of the agreement, is referred to in another paper, which is signed by the

party, the part so referred to may be identified by parol evidence.

Beckwith vs. Talbot, 95 U. S. 289-292.

(i) And so parol evidence is admissible to identify the subject-matter to which the writing refers.

Barry vs. Coombe, 1 Peters 640.

**Consideration.** In some states it is not necessary that the consideration should be expressed in the memorandum; but in Minnesota this is required, and it has been held that the expression of a consideration is sufficient, though the actual consideration is not mentioned, so the words "for value received" have been held a sufficient expression within the statute.

Osborne vs. Baker, 34 Minn. 307.

**Signing.** Ordinarily the signing of an agreement consists in the party's signature written at the end of the memorandum; but it may consist in simply his initials, or even his mark, even though he can write.

Sanborn vs. Flagler, 9 Allen 474.

Brown vs. The Bank, 6 Hill 443.

Baker vs. Dening, 8 A. & E. 94.

So a person's name may even be printed on the written agreement, or stamped, or engraved, or photographed, so long as it appears that he has adopted such signature as his own.

Weston vs. Myers, 33 Ill. 424.

Brayley vs. Kelly, 25 Minn. 160.

Bennett vs. Brumfitt, L. R. 3 C. P. 28-30.

The signature may also appear at the beginning or end of the writing or elsewhere, if the signer recognizes the paper as one which he intends to be bound by.

Clason vs. Bailey, 14 John. 484.

Nor is it necessary that the writing be signed by both parties, as a written offer verbally accepted will be binding upon the one who has signed it, except as herein-after noticed.

Morin vs. Martz, 13 Minn. 191.

But this case must be distinguished from a contract to sell land, where under our statute a written offer orally accepted

will not suffice, as both parties must sign such contracts.

Lanz vs. McLaughlin, 14 Minn. 72.

The fact that one party may be bound under such contracts, while the other one is not bound, seems to be an exception to the general principle that contracts must be mutual; but this exception is only apparent. The party who has procured his written evidence is simply in a better position than the other party who has neglected to procure such evidence.

Justice vs. Lang, 42 N. Y. 493.

**Judicial Construction.** Having so far examined the formalities of these agreements, we will now take the statute up section by section.

The following agreements must be reduced to writing in order that an action may be maintained upon them.

**First Clause.** "Every agreement that *by its terms* is not to be performed within one year from the making thereof."

Cowles vs. Warner, 22 Minn. 449.

This clause does not refer to contracts which may possibly be performed within one year, and which may possibly continue for a longer period. In other words contingencies as to time are not within the statute.

Fenton vs. Emblers, 2 Burrows, 1278.

Heath vs. Heath, 31 Wis. 223.

Kent vs. Kent, 62 N. Y. 560.

Curtis vs. Sage, 35 Ill. 22.

An agreement, which cannot by its terms be performed within one year, such as a contract for three years' services, is within the statute, and must be in writing in order to form the basis of a demand; but even if not in writing the oral agreement may be used for certain purposes.

First. If one person employ another for the term of three years, and the employer should discharge the employee without cause, such employee may maintain an action on quantum meruit for the reasonable value of his services, and the employer cannot invoke the statute to his aid.

Wm. Butcher Steel Works vs. Atkinson, 68 Ill. 421.

Second. But if the employee leaves the employer's service without cause, he cannot maintain an action on a quantum

meruit, and the employer can avail himself of the statute as a defense.

Kruger vs. Leppel, 42 Minn. 6.

But if the employee should leave the employer's service for good cause, as in case of sickness, he can maintain an action on a quantum meruit, and recover his wages pro rata.

La Du-King Mfg. Co. vs. La Du, 36 Minn. 473.

Clark vs. Terry, 25 Conn. 395.

So a parol lease of real estate for the term of one year to commence in the future is invalid in Minnesota.

Jellett vs. Rhode, 43 Minn. 166.

**Second Clause.** "Every special promise to answer for the debt, default, or doings of another."

Such a promise is usually termed a guaranty. The plain object of the statute is to require more certain evidence in order to charge the party for the debt of another person than might be required in order to charge a person for a debt of his own.

(a) The words "special promise" mean a promise in fact, as distinguished from a promise implied by law.

Sage vs. Wilcox, 6 Conn. 81-85.

Goodwin & Al. vs. Gilbert & Al., 9 Mass. 510.

(b) The phrase "debt, default, or doings of another" includes any liability, present or future, arising out of contract or tort. There must exist a liability in the present, or the prospect of one in the future, before a person can answer for it.

Matson vs. Wharam, 2 T. R. 80.

Mead, Mason & Co. vs. Watson, 57 Vt. 426.

(c) The words "another person" mean some person other than either of the parties to the agreement, i. e., a third person, as if A promise B to pay B's debt, this would not fall within the statute; but if A promise B to pay C's debt, that would fall within the statute.

Minor vs. Walter, 17 Mass. 236.

Barker vs. Bucklin, 2 Denio 45-60.

**Examples.** (a) If goods are sold to A upon his credit, and B promises to answer for the debt to the vendor, such

promise is within the statute, and must be in writing and signed by the party to be charged.

Cahill vs. Bigelow, 18 Pick. 369.

Cole vs. Hutchinson, 34 Minn. 410.

Matson & A. vs. Wharam, 2 T. R. 80.

Jones vs. Cooper, 1 Cowper 227.

(b) The real question in such case is, to whom was the credit given. If the credit is given to the person receiving the goods, and some other party promises to answer for that debt, then such agreement is of course within the statute.

Cole vs. Hutchinson, 34 Minn. 410.

Chase vs. Day, 17 John. 114.

(c) But a promise to pay the debt of another, in consideration of that other's release from the debt, is not within the statute, because there remains no debt of "another" to answer for.

Yale vs. Edgerton, 14 Minn. 194-202.

Eddy et al. vs. Roberts, 17 Ill. 505.

Wood vs. Corcoran, 1 Allen 405.

(d) A promise to the debtor himself to pay his debt is not within the statute, because it is not the debt of a third person, as where A promises B to pay B's debt to another.

Eastwood vs. Kenyon, 11 A. & E. 438.

Alger vs. Scoville, 1 Gray 391.

Stariha vs. Greenwood, 28 Minn. 521.

Holbrook vs. Jackson & A., 7 Cush. 136.

(e) So the promise to save one harmless from the results of a transaction, into which he enters at the request of the promisor, is not within the statute, for it is not an answer for the debt of a third person.

Aldrich vs. Ames, 9 Gray 76.

Barry vs. Ransom, 12 N. Y. 462.

(f) So where the leading purpose of the promisor is to promote some end of his own, in such case the promise is not within the statute, although the debt of a third person is incidentally guaranteed, as whether the holder of a promissory

note transfers it guaranteeing its payment at maturity to further some enterprise of his own.

Nichols, etc. vs. Allen, 22 Minn. 283.

Cardell vs. McNeil, 21 N. Y. 336.

Sheldon vs. Butter & A., 24 Minn. 513.

Wilson vs. Hentges, 29 Minn. 102.

(g) And also where a *del credere agent* undertakes, for an increased commission, to sell the goods of his employer, and guarantees the solvency of the purchaser, such promise is not within the statute of frauds.

Osborne & Co. vs. Baker, 34 Minn. 309.

Swan et al. vs. Nesmith et al., 7 Pick. 220.

(h) "So where the purpose of the promise to pay the debt of a third person is to secure the benefit to the promisor by relieving his property from a lien, or securing or confirming his possession, the promise is original and not collateral, and is not within the statute of frauds," as where A purchases premises subject to a mortgage, the payment of which he does not assume, but the interest falling due A verbally promises the holder of the mortgage that if he will not foreclose he will pay all the interest in arrear, to which the holder of the mortgage assents.

Prime vs. Koehler, 77 N. Y. 91.

Scott vs. White, 71 Ill. 287.

**Conclusions.** From the foregoing examination we observe the following classes of cases:

First. Where the promise to pay is made at the same time or before the credit is given or the debt incurred, as in the sale of goods, the agreement is within the statute, and must be in writing.

Cole vs. Hutchinson, 34 Minn. 410.

Second. Where the promise to pay is made after the debt has been contracted (and in which case the promise must rest upon some new consideration in connection with the original debt, as a forbearance to enforce a legal claim), the agreement is within the statute, and must be in writing.

Mallory vs. Gillett, 21 N. Y. 412.

Third. Where the promise to pay is made after the original debt has been incurred, but is made upon a consideration passing to the promisor from the promisee, then the agreement is not within the statute, and may be oral.

Cardell vs. McNiel, 21 N. Y. 336.

Leonard vs. Vredenburg, 8 John. 28.

Walker vs. McDonald, 5 Minn. 455.

**Third Clause.** "Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry."

(a) If a person promise to do some act, in consideration that the promisee marry him, such promise is of course within the statute, and must be in writing.

Henry vs. Henry, 27 Oh. St. 121.

(b) The mutual promises to marry are not within this clause of the statute; but if one promise to marry another in two years from date of the engagement, so that the agreement *by its terms* cannot be performed within one year from the time that it is made, the first clause of this statute then applies, and to be valid the agreement must be in writing.

Clark vs. Pendleton, 20 Conn. 495.

Nichols vs. Weaver, 7 Kan. 373.

Derby vs. Phelps, 2 N. H. 515.

**Sale of Goods.** Section 4210 of the Minnesota statutes has reference to the sale of goods, and declares that "Every contract for the sale of any goods, chattels, or things in action, for the price of \$50 or more shall be void unless;

*First.* A note or memorandum of such contract is made in writing, and subscribed by the parties to be charged therewith."

(a) As to what are goods, chattels, and things in action, is not always easy to determine. Where one agreed to furnish material, and to construct it into certain movable houses of certain dimensions and deliver them at a certain place, it was held that this contract was not for the sale of material *in solido*, but that it blended together the price of the material sold and compensation for work performed, and consequently was not a sale of goods.

Phipps vs. McFarlane, 3 Minn. 109.



(b) But where one promised by parol to furnish railroad ties, it was held that it was a sale of goods, and the contract fell within the statute of frauds.

Russell vs. Ry. Co. 39 Minn. 145.

(c) Parol evidence is not admissible to show that at the time that the agreement was entered into there was an oral understanding that the party signing the same might revoke the agreement by notifying the other party of the revocation, as this oral modification would reduce the whole agreement to an oral agreement.

Wemple vs. Knopf, 15 Minn. 440.

(d) The note or memorandum in this section must be signed by the party to be charged, though it may not be signed by the other party.

Morin vs. Martz, 13 Minn. 191.

(e) This note or memorandum also must state the price of the goods sold; otherwise an essential element of the contract is omitted.

Hanson vs. Marsh, 40 Minn. 1.

Irvine vs. Stone, 6 Cush. 508.

“*Second.* Unless the buyer accepts and receives part of such goods, or the evidences, or some of them, of such things in action.”

(a) This second clause provides that the agreement of sale must be in writing, unless the purchaser both *accepts* and *receives* part of the goods sold. Either acceptance or receipt alone is not sufficient; there must be both receipt and acceptance.

Gaslin vs. Pinney, 24 Minn. 322.

Ortloff vs. Klitske, 43 Minn. 154.

Cooke vs. Millard, 65 N. Y. 352.

Stone vs. Browning, 51 N. Y. 211.

Fontaine vs. Bush, 40 Minn. 141.

(b) A delivery of the goods for transportation, to a common carrier selected by the seller, will not take the agreement from under the statute.

Simmons H. Co. vs. Mullen, 33 Minn. 195.

“*Third.* Unless the buyer, *at the time*, pays some part of the purchase-money.”

(a) Under the third clause it is provided that such a contract of sale shall be valid, even though not in writing, if a part of the purchase price has been paid at the time the contract is made. A payment at any subsequent time, unless there is practically a new contract made, will not be sufficient.

Hunter vs. Wetsell et al., 57 N. Y. 375.

Paine vs. Fulton, 34 Wis. 83.

(b) Part payment, by an *agreement* to offset an existing debt, is not sufficient to meet the requirements of the statute.

Walker vs. Nussey, 16 M. & W. 302.

M. & W. Refining Co. vs. McMahon's Adm., 38 N. J. L. 536.

Artcher vs. Zeh, 5 Hill 200-205.

(c) It is not necessary that money should pass from the vendee to the vendor, but there must be an actual payment at that time in some form. An agreement to pay or offset a debt, still leaves the agreement in words simply.

Dow vs. Worthen, 37 Vt. 108.

Cotterill vs. Stevens, 10 Wis. 422.

Brabin vs. Hyde, 32 N. Y. 519-523.

(d) The payment required under this section may be made by offset, by exchange of property, by giving one's check, or transferring the note of a third party, or even the surrender of an existing note held by the vendee against the vendor.

Combs vs. Bateman, 10 Barb. 573.

Sharp vs. Carroll, 27 N. W. R. 832.

The other sections of the Minnesota statute, requiring certain agreements to be in writing, will be considered under the subjects to which they refer. We will simply state here the very important section 4215, which requires that: “Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party by whom the lease or sale is to be made, or by his lawful agent thereunto authorized in writing; and no such

contract when made by such agent shall be entitled to record, unless the authority of such agent is also recorded."

(a) Under this section all the necessary elements of a contract must be found in the memorandum.

Clampet vs. Bells, 39 Minn. 272.

Scanlan vs. Oliver, 42 Minn. 538.

(b) Nor should there be any uncertainty as to the subject-matter of the agreement.

George vs. Conhaim, 38 Minn. 338.

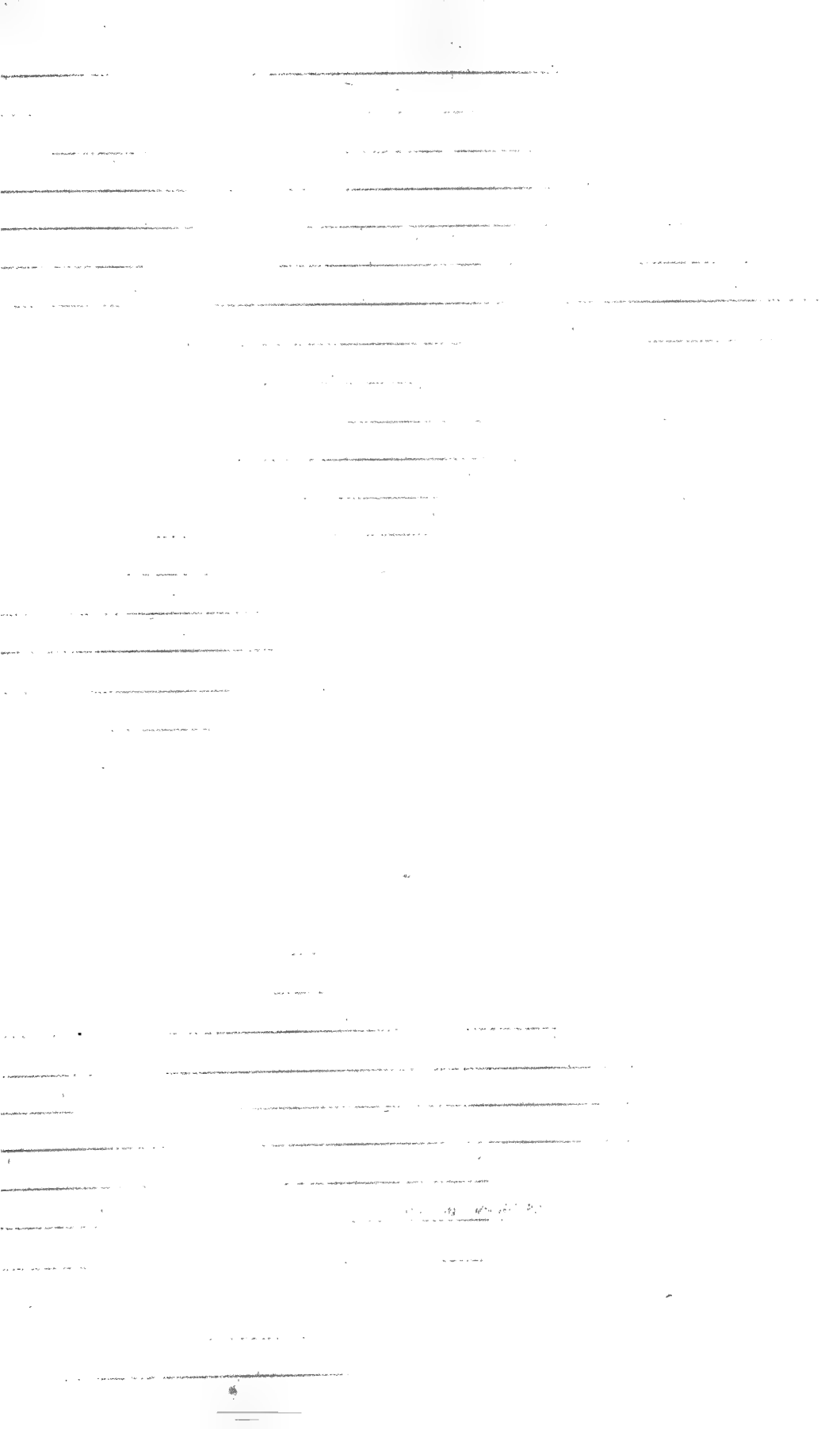
(c) And after the memorandum is made, containing all the essential elements of a contract, it must also be delivered.

Comer vs. Baldwin, 16 Minn. 172.

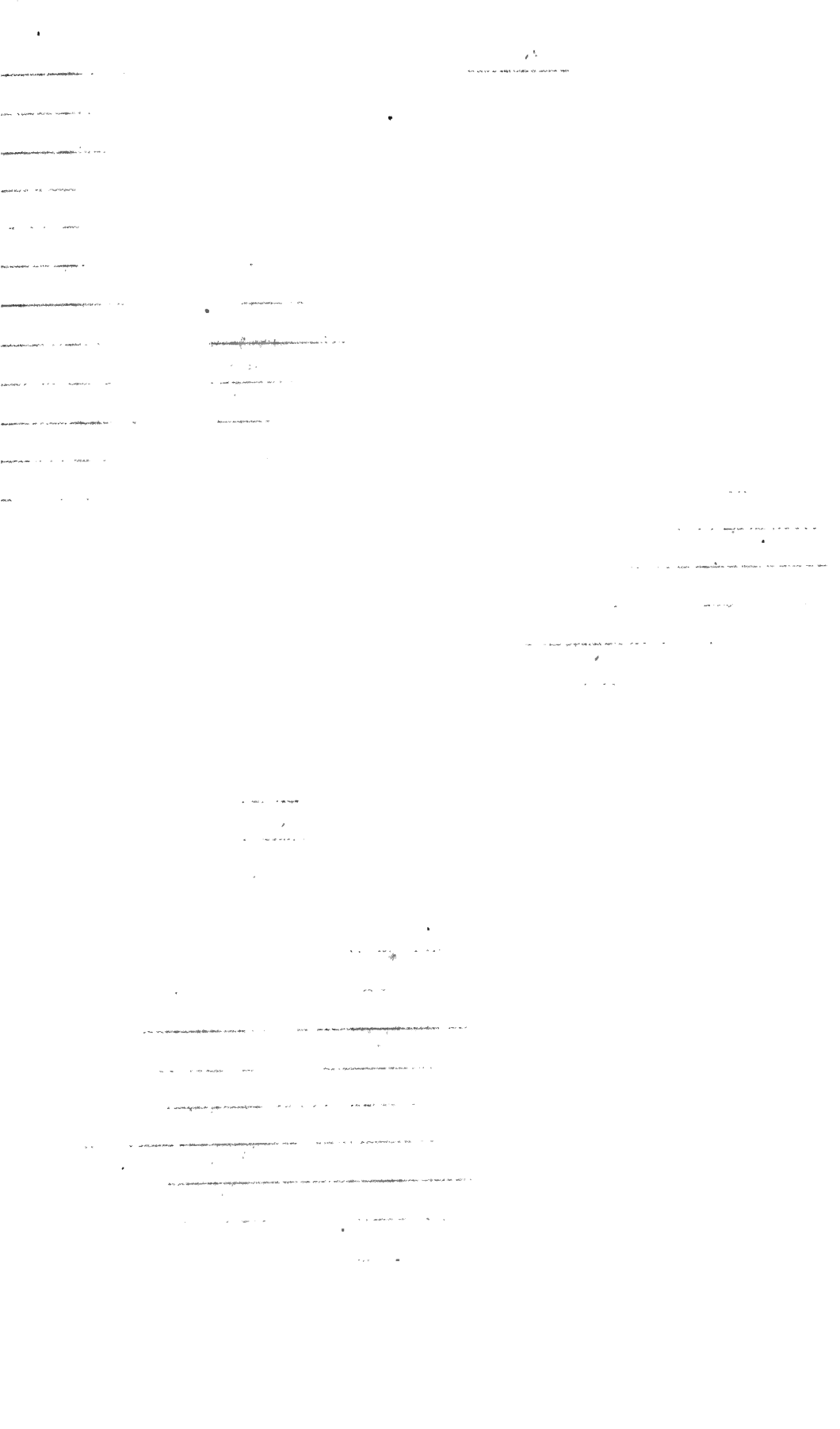
Parker vs. Parker, 1 Gray 409-411.

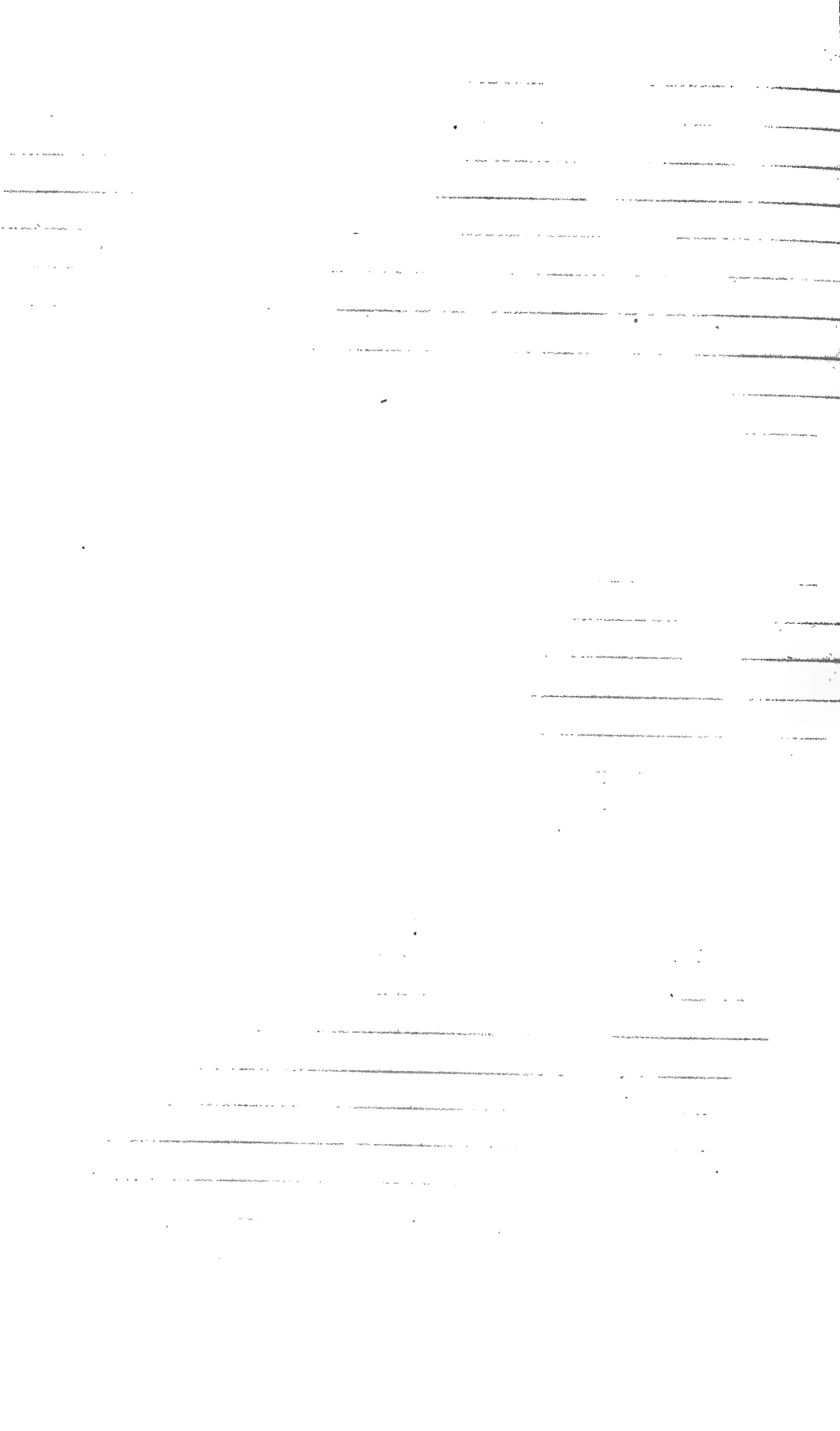
#### FURTHER DEDUCTIONS AND DICTA.













**ASSIGNMENT.**

Having now seen how contracts may be made, and how they are required in certain cases to be reduced to writing, we will next consider the assignability of contracts, and to this end we will examine the following cases :

- \*City of St. Louis vs. Clemens, 42 Mo. 69.
- Devlin vs. Mayor of N. Y., 63 N. Y. 8.
- Wetmore vs. San Francisco, 44 Cal. 294.
- Philadelphia vs. Lockhardt, 73 Pa. St. 211.
- Lett vs. Morris, 4 Simons 607.
- \*Sears vs. Conover, 3 Keyes 113.
- Tyler vs. Barrows, 6 Robt. (N. Y.) 104.
- \*Inhab. of Clinton vs. Fly, 10 Me. 292.
- \*Palo Pinto County vs. Gano & Sons, 60 Tex. 249.
- Hay vs. Willis, 4 Daly (N. Y.) 259.
- Chapin vs. Longworth, 31 Oh. St. 421.
- Bryant vs. Erskine, 55 Me. 153.
- Joslyn vs. Parlin, 54 Vt. 670.
- Bethlehem vs. Annis, 40 N. H. 34.
- Burger vs. Rice, 3 Ind. 125.
- Davis vs. Coburn, 8 Mass. 299.
- Flanders vs. Lamphear, 9 N. H. 201.
- Hardy Imp. Co. vs. Southbend Ir. W., 31 S. W. R. 599.

*Liabilities.*

- \*Lansden et al. vs. McCarthy, 45 Mo. 106.
- \*Ark. Val. Smelt. Co. vs. Belden M. Co., 127 U. S. 379.
- Rappleye vs. Racine Seeder Co., 79 Ia. 220.

*Torts.*

- Hunt vs. Conrad, 47 Minn. 557.
- Cooper vs. St. Paul City Ry., 55 Minn. 134.
- Butler vs. N. Y. & Erie Ry., 22 Barb. 110.
- Jordan vs. Gillen, 44 N. H. 424.
- Tyson vs. McGuineas, 25 Wis. 656.
- Dix vs. Cobb, 4 Mass. 507.
- Weed vs. Jewett, 2 Metc. 608.
- State vs. Williamson, 118 Mo. 146.
- \*Pease vs. Rush, 2 Minn. 107.

- Shaw vs. Ry. Co., 101 U. S. 557.  
Odell vs. Gray, 15 Mo. 337.  
Walker vs. Ocean Bank, 19 Ind. 247.  
New vs. Walker, 108 Ind. 365; 9 N. E. R. 386.  
\*Kernochan vs. Murray et al., 111 N. Y. 306.  
Chamberlain vs. Dunlop, 126 N. Y. 45.  
Drummond vs. Crane, 159 Mass. 577.  
Wright vs. Holbrook, 32 N. Y. 587.  
Allen vs. Baker, 86 N. C. 91.  
Chase vs. Fitz, 132 Mass. 359.  
Janin vs. Browne, 59 Cal. 37.  
\*Wills vs. Summers, 45 Minn. 90.  
Trask vs. Graham, 47 Minn. 571.  
Mason vs. Smith, 131 Mass. 510.  
Overman et al. vs. Sanborn et al., 27 Vt. 54.  
Spear vs. Fuller, 8 N. H. 174.  
Fisher vs. Deering, 60 Ill. 114.

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

### **Deductions and Dicta from Cases Examined.**

From the foregoing cases and others cited and examined, we make the following notes and deductions.

Contracts and the rights arising under them may now, as a general rule, be assigned, unless they involve some relation of public trust or confidence, or unless such rights are accompanied with legal liabilities. Formerly choses in action could not be assigned; but by virtue of statutes and the principles of equity they are now generally assignable; and the assignment of contracts may be made either by the act of the parties thereto, or by operation of law.

**By Act of Parties.** A party to a contract may assign his rights thereunder to a third person as a general rule, provided there is no element of trust or confidence reposed in him by the other party to the contract.

City of St. Louis vs. Clemens, 42 Mo. 69.

Devlin vs. Mayor of N. Y. 63 N. Y. 8.

Wetmore vs. San Francisco, 44 Cal. 294.

Philadelphia vs. Lockhardt, 73 Pa. St. 211.

And the third person to whom such contract is assigned may maintain an action upon such contract in his own name, as the assignor might have done had no assignment been made.

City of St. Louis vs. Clemens, 42 Mo. 69.

And contracts for the sale of personal property, in the absence of any element of trust or credit, are assignable, and the assignee may maintain an action upon them.

Sears vs. Conover, 3 Keyes 113.

But where contracts involve the element of trust and confidence, as where a son enters into a contract to care for his parents, the contract in such case is not assignable, without the consent of the other party to the contract.

Inhab. of Clinton vs. Fly, 10 Me. 292.

Palo Pinto County vs. Gano & Sons, 60 Tex. 249.

So articles of agreement between a master and his apprentice, whereby the master stipulates to teach and instruct his apprentice, is not such a contract as can be assigned.

Davis vs. Coburn, 8 Mass. 299.

And so contracts coupled with liabilities are not assignable, as where one agrees to sell property and to give credit to the purchaser for the purchase price thereof. The vendee in such case cannot assign the agreement.

Lansden et al. vs. McCarthy, 45 Mo. 106.

Ark. Val. Smelt Co. vs. Belden Co., 127 U. S. 379.

It should be noticed, however, that debts incurred for goods sold, or wages earned or to be earned under an existing contract, are subject to assignment.

Dix vs. Cobb, 4 Mass. 508.

Augur vs. N. Y. Belting and Packing Co., 39 Conn. 536.

Weed vs. Jewett, 2 Metc. 608.

But the unearned salary of a public officer is not assignable, upon the ground that such assignment is against public policy and consequently void.

State vs. Williamson, 118 Mo. 146.

State Nat. Bank vs. Fink et al., 24 S. W. R. 256.

In the absence of statute a breach of promise to marry does not survive the death of either party to the agreement where no special damage is alleged.

Stebbins vs. Palmer, 1 Pick. 71.

Chase vs. Fitz, 132 Mass. 359.

Allen vs. Baker, 86 N. C. 91.

Chamberlain Adm. vs. Williamson, 2 M. & S. 408.

**Contracts Assignable Under the Law Merchant.** Of course under the law merchant those particular kinds of contracts, known as negotiable instruments, including notes, bills, and bonds of various kinds, are assignable.

Pease vs. Rush, 2 Minn. 107.

Shaw vs. Ry. Co., 101 U. S. 557.

Odell vs. Gray, 15 Mo. 337.

It may be further stated that all those rights, arising from torts, which do not survive to the personal representative, are not assignable; but if they do survive, such as those rights



arising from injuries to personal property, or trespass on land, or fraud in the sale of realty, they are assignable.

Trash vs. Graham, 47 Minn. 571.

Cooper vs. St. Paul Ry., 55 Minn. 134.

Butler vs. N. Y. & Erie Ry., 22 Barb. 110.

Jordan vs. Gillen, 44 N. H. 424.

Tyson vs. McGuineas, 25 Wis. 656.

Graves vs. Spier, 58 Barb. 349.

**By Operation of Law.** Contract rights and liabilities are often assigned by operation of law, as is the case when a party to the contract dies and his legal representatives are held liable, and also in the case of covenants in a lease that run with the land, which pass with the lease into the hands of the covenantee's representatives.

Kernochan vs. Murray, 111 N. Y. 306.

Wills vs. Summers, 45 Minn. 90.

**FURTHER DEDUCTIONS AND DICTA.**



7







**RULES OF CONSTRUCTION.**

Inasmuch as the language employed by the parties in reducing their contracts and assignments to writing is often ambiguous, it becomes necessary to interpret and construe such language in order to ascertain the real meaning of the parties, and for that purpose certain rules of construction have been adopted; for a statement of which rules we will examine the following cases:

- \*Mathews vs. Phelps, 61 Mich. 327.
- \*Green Bay etc. Co. vs. Hewett Jr., 55 Wis. 96.
  - Walker vs. Douglass, 70 Ill. 445.
  - Flagg vs. Eames, 40 Vt. 16.
  - Gray vs. Clark & Putnam, 11 Vt. 583.
- \*Haywood vs. Perrin, 10 Pick. 228.
  - Collins vs. Lavelle, 44 Vt. 230.
  - Makepeace vs. Harvard College, 10 Pick. 298.
  - Morse vs. Salisbury, 48 N. Y. 636.
  - Walker vs. Boynton, 120 Mass. 349.
  - Reed vs. Lammel, 28 Minn. 306.
- \*Stearns et al. vs. Sweet et al., 78 Ill. 446.
  - Hawes vs. Smith, 12 Me. 429.
  - Stettauer vs. Hamlin, 97 Ill. 312.
  - Rindskoff vs. Barrett, 14 Ia. 101.
  - Morey vs. Homan, 10 Vt. 565.
  - Hancock vs. Watson, 18 Cal. 138.
  - Chadsey vs. Guion, 97 N. Y. 333.
  - Ward vs. Whitney, 8 N. Y. 442.
  - Adams vs. Hill, 16 Me. 215.
  - Buck vs. Burk, 18 N. Y. 337.
  - Lindley vs. Groff, 37 Minn. 338.
  - Fowler vs. Woodward, 26 Minn. 347.
  - Butler vs. Bohn, 31 Minn. 325.
  - Wells vs. Atkinson, 24 Minn. 161.
  - St. Paul & D. R. Co. vs. Blackmar, 44 Minn. 514.
  - Hill vs. City of Duluth, 58 N. W. R. 992.
  - First Nat. Bank vs. Jagger, 41 Minn. 308; 43 N. W. R. 70.





## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION



**Deductions and Dicta from Cases Examined.**

After contracts have been reduced to writing, and assigned in writing where assignable, it often becomes necessary to construe and interpret the language employed by the parties in such original contract, or the assignment, or both. Whether there is a contract at all or not is a matter of fact for the jury to determine, but what is meant by the contract is a matter of law for the judge; and for his assistance the following rules of construction have been established:

(1) To discover the mutual intention of the parties, and to give that intention effect, is the first and controlling principle of interpretation.

Lindley vs. Groff et al., 37 Minn. 338.

Mathews vs. Phelps, 61 Mich. 327.

Flagg vs. Eames, 40 Vt. 16.

Green Bay Co. vs. Hewett Jr., 55 Wis. 96.

(2) The contract is to be considered in entirety, and each part will be so construed with reference to all the other parts that if possible all may have some effect.

Goosey et al. vs. Goosey et al., 48 Miss. 210-217.

Haywood vs. Perrin, 10 Pick. 228.

(3) The plain, ordinary and popular meaning of the words employed in a contract should be allowed to prevail.

Stearns et al. vs. Sweet et al., 78 Ill. 446.

Hawes vs. Smith, 12 Me. 429.

Bullock vs. Consumers' Lbr. Co., 31 Pac. R. 367.

(4) But if words employed in a contract have acquired a special meaning by usage, such meaning must be given them in the construction of the contract.

Callahan vs. Stanley, 57 Cal. 476.

(5) Besides considering the language employed in the contract the court will also consider the situation of the parties, the subject-matter of the contract, and the purposes and objects to be accomplished by it in order to ascertain the intention and meaning of the parties.

Field et al. vs. Woodmancy, 10 Cush. 427-31.

(6) Technical words in a written contract will be interpreted to mean what they are usually understood to mean by the profession which usually employs them, unless some other meaning is clearly evident.

Ellmaker vs. Ellmaker, 4 Watts 89.

Jackson vs. Myers, 3 John. 388.

(7) Where there are two or more instruments, as a deed and a mortgage, employed by the parties in the same transaction, they will all be construed as one instrument and constituting one contract, and will be interpreted accordingly.

Holbrook vs. Finney, 4 Mass. 566-9.

(8) Where words are employed in a contract which are plainly contrary to the object the parties had in view, as where the word "not" is used in a bond, which makes the bond meaningless, such words are to be rejected.

Hibbard vs. McKindley, 28 Ill. 240.

Wells vs. Tregusan, 2 Salk. 463.

(9) So if a contract is partly written and partly printed, if these parts are repugnant to each other, the written part will control the printed portion.

Chadsey vs. Guion, 97 N. Y. 333.

(10) So when a contract is open to two constructions one of which is lawful and the other of which is unlawful, the former in such case must prevail.

Hobbs vs. McLean, 117 U. S. 567.

United States vs. Central Pacific, 118 U. S. 235.

Wells vs. Atkinson, 24 Minn. 161.

(11) The conduct of the parties in pursuance of a contract whose language is ambiguous, has great weight in determining what they understood the contract to mean.

Topliff vs. Topliff, 122 U. S. 121.

(12) As a general rule the language employed in a contract, in case of ambiguity, will be taken most strongly against the party employing it, as the words of an offer against the offerer, and words in an acceptance against the acceptor, and words in a promissory note against the maker.

Noonan vs. Bradley, 9 Wall. 394.

(13) Courts of both law and equity will correct the mistakes in grammar and writing which clearly appear to be such.

Fowler vs. Woodward, 26 Minn. 347.

Morey vs. Homan, 10 Vt. 565.

The County of De Soto vs. Dickson, 34 Miss. 150.

FURTHER DEDUCTIONS AND DICTA.





$$f(x) = \frac{1}{2} \ln \left( \frac{1+x}{1-x} \right) = \frac{1}{2} \ln \left( \frac{1+x}{1-x} \right) = \frac{1}{2} \ln \left( \frac{1+x}{1-x} \right)$$

$$f(x) = \frac{1}{2} \ln \left( \frac{1+x}{1-x} \right)$$



$$\sqrt{\frac{1}{2} \left( \frac{1}{\sqrt{2}} + \frac{1}{\sqrt{2}} \right)} = \frac{1}{\sqrt{2}}$$

$$\frac{1}{\sqrt{2}} = \frac{1}{\sqrt{2}}$$

$$\frac{1}{\sqrt{2}} = \frac{1}{\sqrt{2}}$$



**DISCHARGE OF CONTRACTS.**

Having seen how contracts may be made, assigned and interpreted, we must now consider, finally, how they may be discharged; and to this end we will examine the following cases:

- \*Kelly vs. Bliss, 54 Wis. 187.
- King vs. Gillett, 7 M. & W. 55.
- \*Rollins vs. Marsh, 128 Mass. 116.
- Siebert vs. Leonard, 17 Minn. 433.
- Munroe vs. Perkins, 9 Pick. 298-304.
- Renard vs. Sampson, 12 N. Y. 561.
- Ill. Cent. Ry. vs. Read, 37 Ill. 485.
- \*Cordes vs. Miller, 39 Mich. 581.
- \*Dexter vs. Norton, 47 N. Y. 62.
- Wells vs. Calnan, 107 Mass. 514.
- Spalding vs. Rosa, 71 N. Y. 40.
- Drake vs. White, 117 Mass. 10.
- Taylor vs. Caldwell, 3 B. & S. 826.
- \*Stees vs. Leonard, 20 Minn. 494.
- \*Meyer vs. Huneke, 55 N. Y. 412.
- Neff vs. Horner, 63 Pa. St. 327.
- Hunt vs. Adams, 6 Mass. 519.
- \*Burtis vs. Thompson, 42 N. Y. 246.
- Howard vs. Daly, 61 N. Y. 362.
- McCormick vs. Basal, 46 Ia. 235.
- Parker vs. Russell, 133 Mass. 74.
- Sheahan vs. Barry, 27 Mich. 217.
- \*Wayman vs. Cochrane, 35 Ill. 152.
- Clark vs. Bowen, 22 How. 270.
- \*Litchfield vs. McDonald, 35 Minn. 167.



## ACTION

## ISSUE

## LAW

## FACTS

## DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

# ACTION

# ISSUE

# LAW

# FACTS

# DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION



ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**ACTION**

**ISSUE**

**LAW**

**FACTS**

**DECISION**

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

ACTION

ISSUE

LAW

FACTS

DECISION

**Deductions and Dicta from Cases Examined.**

From the foregoing cases and others cited and examined we deduce the following propositions.

**Mutual Agreement.** Parties to a contract may discharge their liabilities thereunder by mutual agreement so to do, as in case of a contract to marry, where the parties may discharge each other by mutual consent.

King vs. Gillett, 7 M. & W. 55.

**New Contract.** So contract liabilities may be discharged by the parties substituting a new contract for the old one, or by a release made by one party to the other, under seal, or based upon a valuable consideration.

Ill. Cent. Ry. vs. Read, 37 Ill. 485.

Renard vs. Sampson, 12 N. Y. 561.

Rollins vs. Marsh, 128 Mass. 116.

**Surrender.** The liability on a promissory note may be terminated by a surrender of the note, with intent to discharge the liability.

Larkin vs. Hardenbrook, 90 N. Y. 333.

If one party to a contract has executed his part of it, an agreement then by the parties to release the one who has not performed his part would be without consideration.

Kidder vs. Kidder et al., 33 Pa. St. 268.

**Change of Terms.** So the liabilities under a contract may be discharged by a change in the terms of the contract, where by a new one is in effect substituted for the old.

Rollins vs. Marsh, 128 Mass. 116.

**Mutual Releases.** The release of one of the parties from liability under the original agreement is a sufficient consideration for the release of the other from his liability, and hence the mutual releases are considerations each for the other.

Cutter vs. Cochrane, 116 Mass. 408.

Hewitt vs. Brown, 21 Minn. 163.

In the last case it is said: "It is competent for the parties to a written agreement not within the statute of frauds, at any time before breach of it, by a new contract not in writing in any manner to add to or subtract from or vary or qualify the terms of it, and thus make a new contract, which is to be proved partly by the written agreement, and partly by the subsequent verbal terms engrafted on what would then be left of the written contract."

**Inconsistent Terms.** If the parties to one contract make a new one about the same subject-matter, and the terms of the new one are inconsistent with those of the old, the latter will be considered as changing the former terms.

Stow vs. Russell, 36 Ill. 18.

Renard vs. Sampson, 12 N. Y. 561.

**Oral Agreement.** So a contract under seal may be discharged by an oral agreement fully performed, or if acted upon so far that the parties cannot be put in statu quo.

Munroe vs. Perkins, 9 Pick. 298.

Siebert vs. Leonard, 17 Minn. 433.

Dearborn vs. Cross, 7 Cowen 48.

Canal Co. vs. Ray, 101 U. S. 522-527.

Contracts which are within the statute of frauds cannot be modified by a subsequent parol agreement, because the altering of a written contract by parol makes it all parol.

Brown vs. Sanborn, 21 Minn. 402.

Hill vs. Blake, 97 N. Y. 216.

Vicary vs. Moore, 2 Watts. 451.

But a contract required to be in writing by the statute of frauds *may be discharged* by an oral contract fully performed.

Norton vs. Simons, 124 Mass. 19.

**Novation.** A contract may be discharged by a change in the parties thereto, whereby a new party is substituted for one of the others, by agreement of all. This is known as novation.

Blunt vs. Boyd, 3 Barb. 209.

Malcrone vs. Lbr. Co., 55 Mich. 622.

Cornwall vs. McGinnis, 39 Minn. 407.

In the last case the court says: "To constitute a nova-



tion of parties there must be an extinguishment of the old debt, by mutual agreement between all the parties, whereby it becomes the obligation of the new debtor. The discharge of the old debt must be contemporaneous with, and result from, the consummation of an arrangement with the new debtor."

An illustration of novation is found in the case "where A owes B \$1000, and B owes C \$1000, and the three parties agree between themselves that A shall pay C \$1000, and that B's debt to C shall be extinguished." "In the case supposed C gives a consideration for the promise of A to him in the satisfaction and discharge of the debt of B, and receives a consideration for his discharge of B in the promise to A. A receives a consideration for his promise to C in the satisfaction and discharge of his debt to B. B receives consideration for his debt to A in the satisfaction and discharge of his debt to C."

McKinney vs. Alvis, 14 Ill. 33.

Butterfield vs. Hartshorn, 7 N. H. 345.

Reid et al. vs. Degener et al., 82 Ill. 508.

This change of parties to a contract and discharge of liabilities may be effected by an implied novation, as well as by an express one, as "where a co-partner, after a dissolution of the firm, gave his individual note and the note of a *third person* to adjust and settle a partnership debt, it was held an extinguishment of the demand against the other partners, the creditors having agreed to receive the same in payment of such demand."

Waydell vs. Luer, 3 Denio 410.

**Contingency Expressed.** So a contract may contain a provision for its own determination, as where the buyer of property has the privilege of returning it within a specified time if not found to be as represented by the seller; and also where the parties agree that their respective liabilities shall terminate upon the happening of some event, as is the case in a bond, where if the condition is fulfilled the bond is void.

Ray vs. Thompson, 12 Cush. 281.

Head vs. Tattersall, L. R. 7 Exch. Cases 7.

**Performance.** Contracts may also be discharged and the

parties relieved from their liabilities thereunder by a performance of the contract in accordance with its terms, as where the maker of a promissory note discharges his liability by payment.

**Impossibility of Performance.** Contracts may be discharged in certain cases by the impossibility of their performance, but as a general rule if a man binds himself by a positive and express contract to do an act in itself possible to be performed, he must perform his engagement unless prevented by the law, or the act of the other party; and no hardship, or unforeseen hindrance and difficulty will excuse him from doing what he has expressly agreed to do.

Steels vs. Leonard, 20 Minn. 494.

The Harriman, 9 Wall. 161.

Jones vs. United States, 96 U. S. 24.

Harmony vs. Bingham, 12 N. Y. 99.

Anderson vs. May, 50 Minn. 280.

But there are some apparent exceptions to this rule, where the impossibility of performance will relieve one from liability.

(a) Where a specific thing, whose continued existence is essential to the performance of the contract, is destroyed without fault of the promisor, he is not bound to make compensation in damages for its non-performance, as where a hall is rented for a concert on a certain day, and is destroyed by fire before that day arrives.

Taylor vs. Caldwell, 3 B. & S. 826.

Dexter vs. Norton, 47 N. Y. 62.

Wells vs. Calnan, 107 Mass. 514.

The Tornado, 108 U. S. 342.

Stewart vs. Stone, 127 N. Y. 500.

(b) And again where a contract is for the personal services of the promisor, and the performance of such services becomes impossible by reason of his death, insanity, or sickness, the person so incapacitated is relieved from liability.

Spaulding vs. Rosa, 71 N. Y. 40.

Robinson vs. Davison, L. R. 6 Exch. Cases 269.

Martin vs. Hunt, 1 Allen 418-419.

(c) So if the performance of a contract becomes impossi-

ble by reason of law, then the person failing to perform is relieved from liability.

Baily vs. De Crespigny, L. R. 4 Q. B. Cases 180.

Cordes vs. Miller, 39 Mich. 581.

Jones vs. Judd, 4 N. Y. 411.

People vs. Ins. Co., 91 N. Y. 174.

Semmes vs. Hartford Ins. Co., 13 Wall. 158.

(d) If by a contract a person stipulates to perform his part thereof in either one of two ways, and one way becomes impossible, he is bound in such case to perform it in the other way.

State vs. Worthington, 7 Oh. 171.

Drake vs. White, 117 Mass. 10.

**Operation of Law.** Again, contracts are often discharged by operation of law, as, in the case of merger, where a person takes a security of a higher nature for the same debt and from the same person as the old one the latter is merged in the former, and all liabilities thereunder are extinguished.

Jones vs. Johnson, 3 W. & S. 276.

Banorge vs. Hovey, 5 Mass. 11.

And the same result follows when a contract debt or other claim has been reduced to a judgment, the claims under the contract are all merged in the liabilities under the judgment.

Bangs vs. Watson, 9 Gray 211.

Sweet vs. Brackley, 53 Me. 346.

And so if one party to a contract intentionally alters it in any material part, without the consent of the other party, such other party is thereby relieved from all liability thereunder, upon the ground that public policy demands the protection of legal instruments against secret alterations.

Meyer vs. Huneke, 55 N. Y. 412.

And this rule holds true even though the alteration is beneficial to the party who is not instrumental in effecting the alteration.

Wyman vs. Yeomans, 84 Ill. 403.

Crawford vs. Bank, 100 N. Y. 50.

But an alteration which does not affect a material part of the contract, or an alteration made by a stranger to the in-

strument, or an alteration made with the consent of the other party, does not have the effect of discharging the other party from his liability because of the alteration.

Hunt vs. Adams, 6 Mass. 519.

Tompkins vs. Corwin, 9 Cowen 255.

Kendall vs. Kendall, 12 Allen 92.

**Breach of Contract.** • Contracts may also be discharged by their breach, so that the party not violating the contract may be relieved of his liability thereunder.

(a) As where one party renounces his obligation under a contract before the time of performance, and declares that he will not be bound by it, in such case the other party may if he sees fit treat the contract as broken and bring his action at once, even before the time of performance.

Fox vs. Kitton, 19 Ill. 519-33.

Howard vs. Daly, 61 N. Y. 362-74.

Ferris vs. Spooner, 102 N. Y. 10.

Hochster vs. De La Tour, 2 E. & B. 678.

This is further illustrated in the case where a man engaged himself to marry a lady after the death of his father, and before the father died the defendant married another woman.

Burtis vs. Thompson, 42 N. Y. 246.

Holloway vs. Griffith, 32 Ia. 409.

It is clear that this rule would not apply to a unilateral contract, like a promissory note, where the maker declares that he will not pay it when due.

Burtis vs. Thompson, 42 N. Y. 246-250.

(b) So a contract may be broken by an act that renders the contract impossible of performance. This may be done also before the time of performance arrives, as where one agrees to lease land at a future day, but before that day he leases it to another person; or where he agrees to marry a woman on a future day, but before that day marries another.

Hawley vs. Keeler, 53 N. Y. 114.

Sheahan vs. Barry, 57 Mich. 217.

Derby vs. Johnson, 21 Vt. 17.

(c) And this breach may be made also by utter failure of performance, as where in a sale of goods a party fails to deliver the same according to his agreement, in which case he can maintain no action for the purchase price, as he himself has not performed his part of the contract.

Smith vs. Lewis, 26 Conn. 110.

McMillan vs. Vanderlip, 12 John. 165.

Wyncoop vs. Cowing, 21 Ill. 570-85.

Taylor vs. Longworth, 14 Peters 172-4.

**Statute of Limitations.** Again contracts may be discharged by the expiration of the time allowed under the statute of limitations for bringing an action to enforce them, and also by bankruptcy proceedings.

Litchfield vs. McDonald, 35 Minn. 167.

FURTHER DEDUCTIONS AND DICTA.



# Contents.

Introduction

jurisdiction

Contracts

class point

Part I

Part II

Part III

Part IV

Assent (incl offer + acceptance)

Free (duress)

(mistake)

(Undue influence)

(Misrepresentation + Fraud)

(Quebec - Contracts)

## Part III

Donation

(Mortgage)

lex loci contractus

## Part IV

Statute of Frauds.

Assignment

Construction

Discharge

3

6

9

9

35

43

49

59

68

75

83

91

97

120

129

133

151

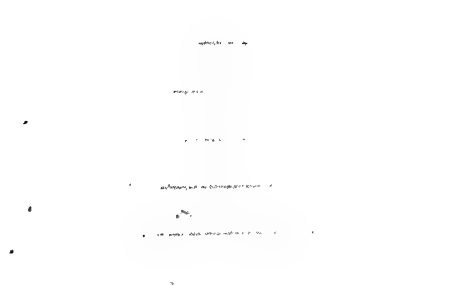
157

163













KF 801A7 A93

Author

Vol.

**Authorities deductions and notes**

**in contracts**

Copy

Date

Borrower's Name

